

97

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 NO. C 07-02757

4 DONNA MATHEWS

5 VERSUS

6 PAN AMERICAN LIFE INSURANCE COMPANY;

7 And Doe 1 through Doe 20, Inclusive

8 VOLUME II

9 Videotape deposition of MICHAEL R.
10 JONES, 601 Poydras Street, New Orleans,
Louisiana 70130, taken in the offices of
11 Affiliated Reporting, 650 Poydras Street,
Suite 2610, New Orleans, Louisiana 70130 on
12 Friday, March 14, 2008.

13 APPEARANCES:

14 LAW OFFICE OF MICHAEL E. KINNEY
Attorneys at Law

15 BY: MICHAEL E. KINNEY, Esquire
438 First Street, Fourth Floor
16 Santa Rosa, California 95401

17 ATTORNEYS FOR PLAINTIFF
18

REED SMITH

19 Attorneys at Law

20 BY: THOMAS E. EVANS, Esquire
1999 Harrison Street, Suite 2400
Oakland, California 94612

21 ATTORNEYS FOR DEFENDANT
22

23 PAN AMERICAN LIFE
Attorneys at Law

24 By: PATRICK C. FRAIZER, Esquire
601 Poydras Street
25 New Orleans, Louisiana 70130

26 ATTORNEYS FOR DEFENDANT
27

1

2

3

4

5

6 VIDEOGRAPHER: KARL STEGEMAN

7

8

9 REPORTED BY:

10

11 LINDY ROOT

12 Certified Court Reporter

13 Registered Professional Reporter

14

1 DONNA MATHEWS VS.
2 PAN AMERICAN LIFE INSURANCE COMPANY; and
3 Doe 1 through Doe 20, Inclusive
4 Deposition of MICHAEL R. JONES
5 Taken on March 14, 2008
6

7 INDEX
8

9		Page, Line
10		
	Exhibit #22	102 13
11	Exhibit #23	111 3
	Exhibit #24	113 13
12	Exhibit #25	120 17
	Exhibit #26	128 4
13	Exhibit #27	140 16
	Exhibit #28	175 17
14	Exhibit #29	187 9
	Exhibit #30	192 15
15	Exhibit #31	193 22
	Exhibit #32	198 21
16	Exhibit #33	209 4
	Exhibit #34	216 8
17	Exhibit #35	216 24
	Exhibit #36	226 6
18	Exhibit #37	232 7
19	Exhibit #38	239 5
20	Exhibit #39	244 20
21	Exhibit #40	246 6
22	Exhibit #41	249 14
23		
24		
25	EXAMINATION BY MR. KINNEY	102 3
26		

1 S T I P U L A T I O N

2 It is stipulated and agreed by and
3 between counsel for the parties hereto that
4 the deposition of the aforementioned
5 witness is hereby being taken under the
6 Federal Rules of Civil Procedure, for all
7 purposes, in accordance with law;

8 That the formalities of reading and
9 signing are specifically not waived;

10 That the formalities of sealing,
11 certification and filing are specifically
12 waived;

13 That all objections, save those as to
14 the form of the question and the
15 responsiveness of the answer, are hereby
16 reserved until such time as this
17 deposition, or any part thereof, may be
18 used or sought to be used in evidence.

19 * * * *

20 LINDY ROOT, Registered Professional
21 Reporter, and Certified Court Reporter, in
22 and for the Parish of Orleans, State of
23 Louisiana, officiated in administering the
24
25 oath to the witness.

26

1 (Video introduction.)

2 MICHAEL R. JONES,

3 after having been first duly sworn by the
4 above-mentioned court reporter, did testify
5 as follows:

6 MR. KINNEY:

7 Before we begin the questioning,
8 Mr. Evans and I had a brief
9 discussion off the record, and I
10 understand that Mr. Jones has been
11 designated as the person most
12 knowledgeable as to category one of
13 my request for -- to depose the
14 person most knowledgeable at Pan
15 American Life which would be the
16 claims presented by plaintiff herein
17 which are the subject of this
18 lawsuit.

19 MR. EVANS:

20 That is correct.

21 MR. KINNEY:

22 Okay. And I will just note that
23 Exhibit #1 -- the notice of taking
24 deposition is attached as Exhibit #1.

25 This single deposition will count

26

1 as both Mr. Jones' personal
2 deposition and the person most
3 knowledgeable on that category.

4 EXAMINATION BY MR. KINNEY:

5 Q. All right. We are back on the record,
6 Mr. Jones.

7 You recall you were sworn to tell the
8 truth yesterday. That same oath still
9 applies today.

10 A. Okay.

11 Q. Let's go to a new document which we will
12 mark as Exhibit #22 for this deposition.

13 (Exhibit #22 was marked for
14 identification.)

15 A. Thank you, ma'am.

16 Q. I show you that document, sir, and ask you
17 if you know what sort of a document that
18 is.

19 A. I sure do.

20 Q. What is it?

21 A. It is a printout of a transaction screen in
22 our Life Com system.

23 Q. Okay. And can you tell me what sort of
24 transaction or transactions is involved on
25 this Exhibit #22?

26

1 A. Sure.

2 What you see is cash moving from the
3 premium account, and you can see a
4 distribution of the 2982 point, and that
5 would have been indicating that a check was
6 cut.

7 Q. I'm sorry.

8 The 2982 point?

9 A. Yeah, it is transaction 2982.

10 On the transaction column, if you go
11 down --

12 Q. Oh, I see it. Okay.

13 So that would be a transaction code.

14 Is that right?

15 A. Yes.

16 Q. And what does 2982 mean?

17 A. That's a distribution -- That means a check
18 was cut --

19 Q. I see.

20 A. -- for that -- for those amounts that are
21 on the right-hand corner -- excuse me -- on
22 the right-hand side underneath the
23 transaction amount.

24 Q. So was there a -- was there a -- were there
25 three checks issued?

26

1 One for 53477, one for 6437, and one
2 for 5357?

3 A. No.

4 The transaction codes are 2982, and
5 they are above the line.

6 Q. I see that.

7 A. And those are indications that checks were
8 cut and the amounts were \$57.07 and another
9 \$57.07, and they would have come out
10 together in one check.

11 Q. So that would be \$114.14 total. Is that
12 right?

13 A. That's correct.

14 Q. So let me ask you about immediately below
15 the handwritten line there.

16 There's a number \$652.71.

17 Do you see that?

18 A. I sure do.

19 Q. And do you know what that means?

20 A. No, I actually don't.

21 I'm not familiar with the 6002
22 transactions, because I don't utilize them
23 in the course of what I do.

24 Q. Okay.

25 A. I'm not the only person that would actually

26

1 make -- that would use the screen in the
2 company.

3 Q. Okay. Can you tell whether you actually
4 did anything in relationship to
5 Exhibit #22?

6 A. Oh, yes. Uh-huh (affirmative response).

7 Q. How can you tell?

8 A. Because my DP desk code is BB 2B7.

9 Q. So all of the entries above the line that
10 show BB 2B7 were made by you.

11 Is that right?

12 A. Yes.

13 Q. Okay. So going to the top line, that
14 begins with a date of 3/12/06 and an
15 account number of 220000 and a transaction
16 amount of \$57.07.

17 Can you tell me what that is?

18 A. That's a transaction to -- What is 01?

19 01 is to credit, I believe, if I recall
20 correctly. I generally have to check my
21 notes.

22 But 2001 is generally a credit to the
23 premium account.

24 Q. Okay. And do you know what transaction
25 code 2002 is?

26

1 A. Yes. That is a debit to a -- Let's see.

2 2001 would put money into an account,
3 and 2002 would take money out of an
4 account.

5 Q. All right. Can you tell by looking at this
6 document whether it pertains to Donna
7 Mathews?

8 A. Well, no. I don't see her name on it. I
9 mean I see a policy number in the upper
10 left-hand corner, and I -- if I was at my
11 desk, let's say, I would type in the policy
12 number and that would tell me that was
13 her or anyone's policy number.

14 Q. I see.

15 Well, I will represent to you, sir,
16 this was produced by Pan American's
17 attorney as a document somehow related to
18 the Donna Mathews case.

19 A. Okay.

20 Q. Can you recall making any of these
21 transactions that appear listed above the
22 handwritten line?

23 A. Not the particulars. I mean when I look at
24 the transaction code I have an idea about
25 what was going on, and based on the dates
26

1 of the information that you were giving
2 yesterday of the documentation that you
3 were showing, I would anticipate that this
4 was a transaction to generate the premium
5 refund that would later be mailed to the
6 insured.

7 Q. Does this appear to be consistent with a
8 premium refund?

9 A. Yes.

10 Q. Okay. Now, as you sit here today -- Well,
11 let me ask you another question first.

12 Go to the third transaction -- Strike
13 that.

14 Go to the second transaction from the
15 top. It starts with a J date of 3/12/06.

16 Do you see that?

17 A. Okay. Uh-huh (affirmative response).

18 Q. What is a J date?

19 A. That would be the date that the transaction
20 is taking place.

21 Q. Okay. And then the next column is a due
22 date.

23 Do you see that?

24 A. Uh-huh (affirmative response).

25 Q. Is that yes?

26

1 A. Yes. I'm sorry. Yes.

2 Q. And that appears to say 1/6/06.

3 Do you see that?

4 A. Yes, it does.

5 Q. What does that refer to?

6 A. That refers to the -- We call it a

7 monthiversary, and that would have been the

8 month that -- excuse me -- the month and

9 day that her premium would have been due at

10 the company.

11 Q. Okay. And then transaction 2002 is a

12 credit. Is that right?

13 A. That's correct.

14 Q. Okay. And then the amount was \$47.03. Is

15 that right?

16 A. Yes.

17 Q. So --

18 A. But that's just part of it.

19 Q. Okay. What --

20 A. Because the next two lines actually are

21 also part of that transaction.

22 Q. Oh, okay.

23 What do they refer to?

24 A. The same dollar amount. The \$57.07.

25 For reasons that are unknown to me, on

26

1 occasion when you make a transaction in the
2 Life Com system, the system will separate
3 the dollar amounts. I don't know why it
4 does that, but it doesn't change the amount
5 that the person, you know, on the outside,
6 the insured, the dollar amounts, it doesn't
7 do anything to what the check amount would
8 be. But it does -- in the system it just
9 has these odd little breakdowns.

10 Q. Okay. So the total of those three numbers
11 comes out to 57.07. Right?

12 A. Yes, I believe so.

13 Q. I do, too.

14 And that was credited to a premium
15 account. Is that right?

16 A. Yes.

17 Q. Why would you credit money to a premium
18 account?

19 A. For a number of reasons. In trying to make
20 sure that you generate the dollars for the
21 refund, you might have to do some
22 maneuvering in the system to make sure that
23 the insured gets the proper amount of
24 dollars in their refund check.

25 Q. Okay. But am I right that what these
26

1 first -- these three lines we just
2 discussed with the due date of 1/6/06 -- is
3 you credited \$57.07 to this insured's
4 premium account for a premium date of
5 January 6, 2006.

6 Is that right?

7 A. Yes.

8 Q. So prior to this credit, her premium
9 account with Pan American had \$57.07 less
10 in it than after this transaction.

11 Is that right?

12 A. No. Not exactly.

13 I mean all these journal dates happened
14 on the same day, and the sum of the
15 accounting transactions could be a net of
16 zero, if you follow what I'm saying.

17 Q. Well, I --

18 A. This system is not a realtime system. It's
19 a batch system. So whatever you do during
20 the day doesn't take effect until the
21 evening time.

22 So you can have a lot of transactions
23 moving around in the day with no actual
24 effect to the person's policy. It's just
25 accounting transactions.

26

1 Q. Okay. Let's go to another document which
2 we will mark as Exhibit #23.

3 (Exhibit #23 was marked for
4 identification.)

5 A. Okay.

6 Q. And I show you that document, sir, and ask
7 you if you can identify that.

8 A. Sure. This is another screen print from
9 the Life Com system.

10 Q. Okay. On the front page there's some
11 handwriting.

12 Do you see that?

13 A. Yes.

14 Q. Is that your handwriting?

15 A. Yes, it is.

16 Q. Okay. Can you tell when the first page of
17 this document was generated?

18 A. Yes, I can.

19 Q. When?

20 A. 4/20/06.

21 Q. Okay. And does it refer to some
22 transactions?

23 A. Yes, it does.

24 Q. What transactions are referenced on the
25 first page of this document?

26

1 A. This is a sum of \$652.71 of being moved
2 around on April 6 -- Well, sorry. For
3 April 6, 2007.

4 Q. Okay. And when you say moved around, what
5 happened to that money?

6 A. It was moved from the premium account into
7 the waiver account.

8 Q. Okay. What is the difference between a
9 premium account and a waiver account?

10 A. Well, the premium account is an account
11 that would hold or at least record dollars
12 that are attached to a person's premium,
13 and the waiver account is a general account
14 where we would have money for -- money to
15 be applied to a person's policy for the
16 purpose of waiver.

17 Q. Okay. I want you to go to the last page of
18 this document, PAL 0174.

19 Once, again, there's some handwriting
20 on this page.

21 Do you see that?

22 A. Yes, I do.

23 Q. Is that also your handwriting?

24 A. No, that's not.

25 I mean you can read that. So that's
26

1 not mine.

2 Q. Do you know whose handwriting this is?

3 A. No.

4 Q. Okay. This page of the document, do you
5 know what it is?

6 A. No. I'm not actually familiar with this
7 screen.

8 Q. Okay.

9 A. I mean really not familiar with it. I
10 don't recall ever seeing this one before.

11 Q. Okay. Let's move to another exhibit then.
12 This will be Exhibit 24.

13 (Exhibit #24 was marked for
14 identification.)

15 I direct your attention to the first
16 page of Exhibit #24.

17 A. Okay.

18 Q. Okay. And am I correct that this is the
19 same sort of document that was -- we saw on
20 the first page of Exhibit #23?

21 A. Yes, it is.

22 Q. Okay. And do you know whether you
23 generated this document?

24 A. Yes, I do.

25 Q. Okay. And can you tell me what is

26

1 represented by this document?

2 A. Sure. This would be money moving from the
3 premium account into the waiver account.

4 Q. Okay. And when did that transaction take
5 place?

6 A. April 6, 2007.

7 I'm sorry. No.

8 It actually took place on April 20,
9 2006, with a due date of April 6, 2007.

10 Q. What does that mean, a due date of April 6,
11 2007?

12 A. That would be the date that a premium
13 payment was due on this particular -- on
14 this particular policy, and as I am looking
15 at the transaction codes, what I see is
16 that this money was being taken from the
17 premium account and placed into the waiver
18 account, because according to this date --
19 Actually on both of these, April 20, 2006,
20 it would have been money applied to the
21 account from her waiver -- excuse
22 me -- from our waiver to her by premium
23 policy, and that money would have been
24 moved back into the waiver account.

25 Q. Okay. I have to confess I'm a little
26

1 confused by these accounts. I will see if
2 I can clear it up, but I don't want to
3 spend a lot of time on it.

4 A. Okay.

5 Q. But I want to see if I can clear it up a
6 little bit.

7 A. Okay.

8 Q. Under what circumstances do you move money
9 from -- Strike that.

10 Let me ask you this.

11 Am I right this Exhibit #24 refers to
12 the movement of funds from a waiver account
13 to a premium account?

14 Is that right?

15 A. No.

16 Actually these are representing money
17 going into the waiver account.

18 Q. So from a premium account into a waiver
19 account. Is that right?

20 A. Yes.

21 Q. Okay. So under what circumstances would
22 Pan American move money from a premium
23 account into a waiver account?

24 A. Well, if the money is placed in a premium
25 account and it's -- it came from a waiver

26

1 account, when the person is no longer on
2 waiver, then that money would need to go
3 back into a waiver account.

4 So that would be why it's being moved,
5 and -- I'm sorry. I think -- I mean I
6 don't want to -- You said you don't want to
7 spend a lot of time.

8 Q. No, I don't.

9 A. So I don't want to get into the particulars
10 of these.

11 Q. I am just trying to understand.

12 Well, what is the waiver account used
13 for?

14 A. It hold funds that are applied to an
15 individual's policy for waiver. When a
16 policy is placed on waiver, it
17 doesn't -- it's not like time is suspended
18 for the policy. Money is still due on the
19 policy, but if a person's policy is in a
20 waiver, then Pan American -- you as an
21 insured don't have to pay the premiums
22 anymore that month, but the accounting
23 transactions that are performed in Life Com
24 still require money to be applied to the
25 policy.

26

1 So Pan American Life has a waiver
2 account so that internally the money goes
3 from the waiver account to the premium
4 account, and in effect takes the -- pays
5 the account so that the insured doesn't
6 have to.

7 Q. Thank you.

8 All right. I would like you to turn to
9 a document we previously marked as
10 Exhibit #5.

11 Well, you can't very well turn to it,
12 because it's over here.

13 A. Oh.

14 Q. Have you ever seen this document before?

15 A. Yes, I have.

16 Q. What is this letter?

17 A. This is a letter from Medical Director
18 Solutions. It was sent to me regarding
19 Donna Mathews.

20 Q. Okay. And who is Medical Director
21 Solutions?

22 A. It's a company, and there are a number of
23 people that work there that are vendors for
24 Pan American Life, or at least for me.
25 They are a vendor of mine with my line of

26

1 business, and I work with them.

2 Q. Okay. And what service do they perform for
3 Pan American?

4 A. They provide a second opinion as far as
5 medical records that are received regarding
6 people's disability policies.

7 Q. Okay. When you received this document did
8 you read it?

9 A. Yes.

10 Q. And did it cause you to take any action?

11 A. I couldn't say that this one particular
12 document caused me to do anything.

13 Q. Okay. Did it in any way affect your
14 understanding of whether or not Ms. Mathews
15 was back at work?

16 A. No. This didn't make any reference I
17 believe to her being at work or not.

18 Q. Okay.

19 A. I think it just pretty much focused on the
20 medical notes that I would have forwarded
21 to them, and they would have given me an
22 opinion regarding what they thought those
23 medical notes indicated her medical
24 condition was.

25 Q. Okay. I would like for you to look at the
26

1 very top paragraph on page 2 of this
2 document.

3 It says there's one other APS form of
4 unclear date and illegible signature.

5 A. Uh-huh (affirmative response).

6 Q. And then following that the sentence an APS
7 form with these diagnoses should be from
8 either Dr. Bodor or Dr. Smith.

9 Do you see that?

10 A. Yes, I do.

11 Q. Did that in any way cause you to seek
12 further medical documentation from Ms.
13 Mathews?

14 A. That one paragraph?

15 Q. Yes.

16 A. No. I couldn't make that statement.

17 Q. Okay. Do you recall after you received
18 this document requesting further medical
19 information from Ms. Mathews' physicians?

20 A. No, I don't recall.

21 Q. Okay. When you received this document --
22 Strike that.

23 Go back to the first page of the
24 document.

25 A. Okay. Sorry.

26

1 Q. Can you tell me when you received it?

2 A. It's stamped April 25, 2006.

3 Q. And is that generally stamped at or about
4 the time it's received?

5 A. Yes.

6 Q. Okay. Did this document in any way
7 influence your decision as to whether to
8 send Ms. Mathews to an independent medical
9 examination?

10 A. No, not this one document.

11 When you make a decision on a claim,
12 you try to look at it as a whole. I try to
13 look at all the information I have before I
14 make a decision.

15 Q. Okay. Let's go to the next document. We
16 will mark this as Exhibit #25.

17 (Exhibit #25 was marked for
18 identification.)

19 It's a two-page document which appears
20 to be two e-mail printouts.

21 Do you see that, sir?

22 A. Yes, I do.

23 Q. Okay. Can you tell me what these e-mail
24 printouts relate to?

25 A. They relate to medical record requests.

26

1 Q. Okay. And did you make these medical
2 record requests?

3 A. Yes, I did.

4 Q. Okay. You instructed Ms. Bourg to get some
5 further medical records. Is that right?

6 A. Yes, that's correct.

7 Q. Okay.

8 A. She would have placed the request with our
9 third party data collection specialist.

10 Q. Okay. And what date did you ask Ms. Bourg
11 to obtain these medical records?

12 A. Well, the date on the e-mail says May 8,
13 2006.

14 Q. Any reason to believe that's incorrect?

15 A. No.

16 Q. So am I correct that as of May 8, 2006, you
17 were still gathering medical records in
18 connection with this claim?

19 A. No. I wouldn't -- I don't think that's an
20 accurate way of putting it.

21 Q. Okay. How would you describe what was
22 going on at the time you sent these
23 e-mails?

24 A. Well, at the time the e-mails were sent,
25 this would have been after we -- well,
26

1 after I had made a decision to open up the
2 claim. And by open, I mean issue a benefit
3 to the insured, and based on the APS the
4 claim would have been closed.

5 If the insured felt that she was still
6 disabled, or he or she was still disabled,
7 then they would, you know, they would
8 express that to us, and if they felt like
9 there was something that would support a
10 continued claim, then they would request
11 that we further evaluate it.

12 So as far as looking at the life
13 process of this claim, this was going to
14 second base by me.

15 Q. Okay. So this -- Am I correct that your
16 testimony is that Exhibit #25, the e-mails
17 to Ms. Bourg, were a response by you to a
18 request by Ms. Mathews to open her claim?

19 A. Yes.

20 Q. Okay. And is it your understanding that
21 Ms. Mathews knew that her claim was closed
22 as of May 8, 2006?

23 A. Yes.

24 Q. And how would she have come by that
25 information?

26

1 A. Because when I sent her -- Well, two ways.

2 One way is the EOB's would indicate
3 that you are receiving a final payment, and
4 by May, if for some reason she was not
5 reading the EOB's and, you know, crumpled
6 them up and threw them away or something, I
7 think by May not receiving a check, she
8 would have understood that she wasn't
9 receiving benefits.

10 Q. Okay. Other than the EOB's, there was no
11 communication from Pan Am to Ms. Mathews
12 indicating to her that the claim had been
13 closed.

14 Is that right?

15 A. Well, other than the correspondence, yes.

16 Q. There was correspondence other than the
17 explanation of benefits?

18 A. Oh, I'm sorry.

19 No.

20 Correspondence and the explanation of
21 benefits for me are the same thing.

22 Q. Okay. Well --

23 A. So in the correspondence, the EOB's, that
24 would be how I would communicate to her
25 that the claim was closed.

26

1 Q. You wouldn't write to her and say we
2 decided to close your claim.

3 Is that right?

4 A. That's correct.

5 Q. And if she received an EOB that didn't
6 contain the statement that your claim is
7 closed, she would reasonably expect the
8 claim would be open. Right?

9 MR. EVANS:

10 Objection. Calls for speculation.

11 MR. KINNEY:

12 Oh, no it doesn't.

13 She did receive that EOB, and it's
14 in the record. That is not
15 speculation.

16 MR. EVANS:

17 You're asking him to speculate as
18 to what she believed.

19 Certainly she can testify as to
20 what she believed at her deposition,
21 but I'm not -- That's my objection.

22 EXAMINATION BY MR. KINNEY:

23 Q. Are you aware that Ms. Mathews received an
24 EOB prior to May 8, 2006, that did not tell
25 her that her benefits had been terminated?

26

1 A. Now? Today?

2 Q. Yes.

3 Right now are you aware of that fact?

4 A. I believe yesterday you had an EOB that did
5 not have a statement on there saying that
6 this is your final benefit, but that would
7 have been one of several EOB's she would
8 have received, and there was an EOB that
9 said this is your final benefit payment.

10 Also -- I'm sorry. Not also.

11 Just, yeah, that's the statement.

12 Q. Okay. When you saw that yesterday, was
13 that the first time you had seen an EOB
14 that had gone to Ms. Mathews prior to May 8
15 that had omitted to tell her that that was
16 her final benefit payment?

17 A. Yes, that was the first time.

18 Q. You don't look at the EOB's before they go
19 out.

20 Is that right?

21 A. Yes, I do. I try to look at them all.

22 Q. Okay. But on that particular one you
23 missed the fact that it failed to tell her
24 that her benefit had been terminated?

25 A. That would appear to be the case.

26

1 Q. So when you saw it yesterday were you
2 shocked?

3 A. Shocked?

4 Q. Yes.

5 A. Well, I wasn't happy about it.

6 Q. Okay. Let's go to a document which we
7 previously marked as Exhibit #6.

8 It should be in that stack.

9 A. Okay.

10 Q. Do you see that, sir?

11 A. Yes, I do.

12 Q. Okay. Is this -- Today is the first time
13 you have ever seen this document?

14 A. Yes, it is.

15 Q. Okay. Do you see the second sentence there
16 of this document -- Make that the third
17 sentence.

18 It says our benefits department has
19 advised that you are not currently on
20 waiver since you returned to work on March
21 15, 2006.

22 A. Yes, I do.

23 Q. And was that information that you
24 personally provided to whoever wrote this
25 letter?

26

1 A. I can't make that statement.

2 Q. Do you know how whoever wrote this letter
3 came to that information?

4 A. No, I don't.

5 Q. Okay. Was there anyone -- Strike that.

6 Were you in the benefits department as
7 of May 3, 2006?

8 A. Yes, I was.

9 Q. Okay. Was there anyone else in the
10 benefits department from whom the author of
11 this letter could have received that
12 information?

13 A. Yes.

14 Q. Who?

15 A. Elaine Bourg.

16 Q. Anybody else?

17 A. Not to my knowledge.

18 Q. Okay. Had you told Elaine Bourg prior to
19 the date of this letter, May, 3, 2006, that
20 Ms. Mathews had returned to work?

21 A. I don't recall that.

22 Q. Okay. And as of May 3, 2006, did you
23 believe that Ms. Mathews had returned to
24 work?

25 A. I don't recall having a definite knowledge

26

1 either way.

2 Q. Okay. Let's go to an exhibit that we will
3 mark as Exhibit #26.

4 (Exhibit #26 was marked for
5 identification.)

6 I ask you if you can identify that
7 document?

8 A. It is a letter from Pan American Life.
9 From me.

10 Q. Okay. Do you recall writing this letter?

11 A. No, not the actual typing of it, but it
12 looks like good work. Looks like me.

13 Q. Do you recall why you wrote this letter?

14 A. Yes. This would have been a letter to
15 address the withdrawal that happened on her
16 premium account -- her being the insured --
17 on April 12, and I was sending her a letter
18 to let her know what I found in my research
19 of the policy.

20 Q. Okay. How did you come to learn that there
21 was any kind of problem at all with the
22 withdrawals from Ms. Mathews' account?

23 A. When she called the customer service unit
24 and was very vocal in her -- in what
25 happened to her bank account.

26

1 Q. Someone contacted you. Is that right?

2 A. Oh, yeah, they would contact me.

3 Q. And who was that who contacted you?

4 A. I couldn't recall the individual, but it
5 would have been somebody from customer
6 service that would have notified me,
7 saying, hey, Michael, we have an insured
8 who has a problem, can you take a look at
9 it.

10 Q. Okay. And did they tell you anymore about
11 what the problem was?

12 A. No. I can't imagine that they would be
13 particularly detailed. I mean it would be
14 helpful if they were, but most of the time
15 I have to just go and research it out
16 myself.

17 Q. Okay. So in this case you did research it
18 out.

19 What did you find?

20 A. I found that there had been a withdrawal to
21 her account, and that the withdrawal was
22 for an annual premium benefit, and that
23 wasn't good.

24 Q. Do you know how that happened, that the
25 annual premium had been withdrawn?

26

1 A. You mean the actual mechanics of what
2 happens in the system?

3 Q. Well, just -- It was a mistake. Right?

4 A. Oh, yes.

5 Q. Okay. Who made that mistake?

6 A. That would have to come to me. That would
7 have been my mistake.

8 Q. What did you do that caused that mistake?

9 A. Well, when I placed the policy back into
10 premium paying status, I did not adjust the
11 mode for her premium amounts from 12, which
12 would indicate a year, to one month, which
13 would -- Excuse me. To a one in our system
14 that would indicate one month worth of
15 premium to be taken out.

16 As I spoke -- As I addressed yesterday,
17 I was unaware that me taking it out of the
18 waiver status wouldn't automatically adjust
19 it. Wouldn't automatically return her mode
20 to what the prior billing rate was. So I
21 attempted to correct that.

22 Q. I see.

23 Okay. Let's go to a document marked as
24 Exhibit #21.

25 Did you find that?

26

1 A. Yes, I did.

2 Q. Okay. And there are -- There are two pages
3 to this document Bates stamped PAL 0584 and
4 PAL 0585. They appear to be the same
5 letter, but the first page has a post-it
6 note posted over a portion of the letter.

7 Do you see that?

8 A. Yes.

9 Q. Do you know whose handwriting is on the
10 post-it note?

11 A. No, I do not.

12 Q. Well, I would like for you to look -- Let's
13 start with the second page that doesn't
14 have a note on it.

15 A. Oh, okay.

16 Q. Do you recall this letter?

17 A. Not in particular.

18 Q. Okay. Did you write this letter?

19 A. Yes, that's my name down at the bottom, and
20 this would be the type of letter that I
21 would write.

22 Q. Okay. And what type of letter is this?

23 A. It's a reservation of rights letter.

24 Q. Okay. Do you recall why you sent Ms.
25 Mathews a reservation of rights letter?

26

1 A. My recollection would be that I would have
2 written her a reservation of rights letter
3 because we would have -- Well, I would have
4 made a determination to go ahead and issue
5 her benefits. So I would have sent the
6 letter to let her know that the benefits
7 were being issued under a set -- a certain
8 set of circumstances.

9 Q. Okay.

10 A. As addressed in the letter.

11 Q. Going to the second paragraph of the
12 letter, the first sentence, which reads
13 your policy provides that if a claim occurs
14 within the first two years from the
15 effective date, the company has a right to
16 investigate the representations made in the
17 application for insurance.

18 Do you see that?

19 A. Yes, I do.

20 Q. When you sent this letter, did you believe
21 that a claim had occurred within the first
22 two years from the effective date of Ms.
23 Mathews' policy?

24 A. Off the top of my head, no, I don't really
25 recall that.

26

1 This is the standard letter.

2 Q. So that letter --

3 A. What do you guys call it?

4 Boilerplate.

5 There you go.

6 Q. Okay. So this letter goes out -- Strike
7 that.

8 Let me ask you this.

9 This language is included in every
10 reservation of rights letter that you send.

11 Is that right?

12 A. Yes.

13 Q. And you don't make a decision when you send
14 the letter out as to whether or not the
15 claim did occur within the first two years
16 of the effective date?

17 A. No, I don't make a decision at that time,
18 no.

19 Q. Okay. And does it concern you at all that
20 a policyholder might believe that you
21 thought she just recently acquired the
22 policy even though she had had it for
23 years?

24 A. I'm sorry.

25 Could you say that again?

26

1 Q. Well, do you understand that a policyholder
2 who received this letter might think that
3 you believed that she was a newly insured
4 policyholder with Pan American Life?

5 MR. EVANS:

6 Objection. Calls for speculation.

7 THE WITNESS:

8 Oh, sorry. I thought you were
9 going to respond to him.

10 I can't say that I had concern
11 about that. It's never really
12 crossed my mind.

13 You know, I've never tried to
14 anticipate how someone -- how an
15 insured would respond to this
16 particular letter. I wouldn't know.

17 EXAMINATION BY MR. KINNEY:

18 Q. Okay. Is it within the scope of your
19 authority to change the wording of this
20 letter?

21 A. I believe so. My boss might say otherwise
22 I suppose.

23 Q. Going back to the post-it note.

24 I don't know if you noticed, but before
25 you came in here we were taking the
26

1 deposition of Elaine Bourg, and I asked Ms.
2 Bourg if she could recognize the
3 handwriting here, and she said it was hers.

4 A. Okay.

5 Q. Okay. Do you have any idea why Ms. Bourg
6 would write pay one monthly benefit 3/14 to
7 4/14, send letter with pay?

8 A. Yes, I do.

9 Q. Why?

10 A. Because she would have stuck a note on the
11 letter to remind herself that when she
12 generated a benefit payment for this
13 policy or policies, that that was the date
14 span that she was going to attach -- Well,
15 not attach. But that would be the date
16 span that she would write in the EOB to
17 indicate what time period that benefit
18 payment was for.

19 Q. Okay. Did you instruct Ms. Bourg to send
20 one monthly payment along with this letter
21 of July 12?

22 A. Yes. Most likely.

23 Q. Okay.

24 A. Because she wouldn't do something like that
25 on her own.

26

1 Q. Okay. Why did you instruct her to send one
2 monthly payment instead of three monthly
3 payments?

4 A. Because at the time we hadn't made -- Well,
5 I hadn't made a determination as to what
6 I -- what conclusion I could come to with
7 the information that I had with the
8 insured.

9 So my thought is as the insurance
10 company, we always try to give the benefit
11 of the doubt to the insured. So rather
12 than not sending any money at all, if
13 there's -- Like in baseball, a tie goes to
14 the runner.

15 If I'm not sure about something, I
16 would rather go ahead and just make the
17 benefit payment to assist the insured in
18 whatever, you know, their circumstances may
19 be.

20 Q. Okay. And at some point would it be your
21 policy to catch the benefits up?

22 A. Absolutely.

23 Q. At what point would that happen?

24 A. When I felt comfortable making that
25 decision.

26

1 Q. What decision would it be that you would
2 have to make?

3 A. I would have to make a decision that the
4 person was qualified within the guidelines
5 of their policy as to them being actually
6 disabled, and when I was able to come to
7 that conclusion, if they were behind in
8 their payments, I would catch them up.

9 Q. Okay. Did you ever come to that conclusion
10 in Ms. Mathews' case?

11 A. I believe so. She's actually on claim now.

12 Q. And did you catch up her benefit payments?

13 A. That I don't recall.

14 That would be my standard operating
15 procedure is to have her caught up. I
16 believe she's caught up, but you're looking
17 at me like maybe she is not.

18 Q. We will get to that as we go forward.

19 A. Okay.

20 Q. Is it common for you to start a
21 policyholder up a couple, three months
22 behind as was done here with Ms. Mathews?

23 A. I'm sorry.

24 Could you rephrase that?

25 Q. Yeah.

26

1 I mean does this happen all the time,
2 that you authorize a benefits payment
3 that's three, four months in arrears?

4 A. It happens frequently.

5 Q. In what percentage of the cases that you
6 handle do you authorize a benefit payment
7 to be paid -- a single monthly payment to
8 be paid several months in arrears?

9 A. I don't have a percentage. I couldn't
10 speculate as to that.

11 Q. Let's go to a document we previously marked
12 as Exhibit #20.

13 A. Okay.

14 Q. And this is a document of the sort you have
15 been referring to as an EOB. Right?

16 A. Yes.

17 Q. Okay. And EOB means explanation of
18 benefits. Right?

19 A. That's correct.

20 Q. And what's the date of this document,
21 Exhibit #20?

22 A. There's no date on there.

23 Q. How did that happen?

24 A. How did that happen?

25 Q. Yes.

26

1 A. Because it was deleted from Excel in the
2 Excel spreadsheet.

3 Q. Why?

4 A. I couldn't tell you why other than a typo.
5 I mean there would be no purpose in
6 deleting the date. It's not our -- It's
7 not helpful to anybody.

8 Q. Okay. I want you to go to the last page of
9 this document Bates stamped PAL 0094.

10 A. Okay.

11 Q. This is another undated EOB. Correct?

12 A. Yes.

13 Q. Okay. On the right side about halfway down
14 the page, there's an indication one monthly
15 benefit, and then beneath that the words
16 ABI 2/14/06 through 3/14/06.

17 Do you see that?

18 A. Yes, I do.

19 Q. What does that mean?

20 A. The ABI?

21 Q. Yes.

22 A. That means additional benefit increase.

23 Q. Does that refer to the \$400 to the left of
24 that line?

25 A. Yes, it does.

26

1 Q. Okay. Why was there an additional benefit
2 increase on this EOB?

3 A. Because she would have a rider for that
4 amount attached to her policy.

5 Q. Do you know whether page 1 of Exhibit #20
6 was sent to Ms. Mathews?

7 A. Oh, no, I do not.

8 Q. Okay. And the same question for page 3 of
9 this document. Do you know whether it was
10 sent to Ms. Mathews?

11 A. No, I don't.

12 Q. Okay. Do you know -- Well, let's go on to
13 something else.

14 I am going to show you a document which
15 we will mark as Exhibit #27.

16 (Exhibit #27 was marked for
17 identification.)

18 Have you ever seen this document
19 before?

20 A. Yes, I believe so.

21 Q. Okay. Do you know when Pan American
22 received this document?

23 A. Yes, I do.

24 Q. When?

25 A. It is date stamped July 26, 2006.

26

1 Q. Okay. And did you understand from this
2 letter that Ms. Mathews wanted to apply for
3 rehabilitation benefits?

4 A. Yes.

5 Q. Okay. And is there a standard practice at
6 Pan American as to what to do when you
7 receive a letter like this requesting
8 rehabilitation benefits?

9 A. Yes, I have a standard practice. I would
10 respond to the insured please present your
11 claim.

12 Q. Okay. So you would -- Your standard
13 practice would be to write back to the
14 insured?

15 A. Yes.

16 Q. Okay. And ask for additional information?

17 A. Uh-huh (affirmative response).

18 I'm sorry. Yes.

19 Q. Okay. And would you specify what
20 information it is that you want?

21 A. I'm sorry.

22 Specify?

23 Q. What kinds of information you are looking
24 for.

25 A. I would ask them to present their plan.

26

1 Q. Okay. I would like for you to take a look
2 at Exhibit #2.

3 Have you ever read Exhibit #2?

4 A. I believe I have looked at it.

5 Q. Do you have a copy of it at your desk?

6 A. Not to my recollection, no.

7 There's a lot of stuff on there, but I
8 don't think this is one of the many piles
9 of paper that I have.

10 Q. Okay. So when you looked at it in the past
11 where were you?

12 A. At work.

13 Q. Okay. I mean were you at somebody else's
14 desk?

15 A. Oh.

16 Probably at Mr. Simon's desk. His
17 area.

18 Q. Okay. Did he give you a copy?

19 Did he show you a copy?

20 A. He showed me a copy, yes.

21 Q. Did he say anything about it?

22 A. This would be something good to take a look
23 at sometime. Something along those lines.

24 Q. Okay. And you looked through it at that
25 time?

26

1 A. Yes.

2 Q. And have you looked at it since?

3 A. Well, not until today.

4 Q. Okay. How long did you spend with it on
5 that first occasion?

6 A. Probably not that long.

7 Q. Five minutes?

8 A. Just a little while. I mean this would
9 have been, you know, hey, take a look at
10 what some of our competition is doing.
11 Kind of general guidelines sort of thing.

12 Q. Okay. How long ago was it that you looked
13 at this?

14 A. I have no immediate recollection.

15 Q. Do you have any estimate at all?

16 A. A year or two.

17 Q. Okay.

18 THE VIDEOGRAPHER:

19 Excuse me, Counsel. I need to
20 change tapes.

21 MR. KINNEY:

22 Okay. Let's take a break.

23 THE VIDEOGRAPHER:

24 Going off the record. This is the
25 end of videotape number 1. It's

26

1 12:12.

2 (Off the record.)

3 THE VIDEOGRAPHER:

4 We are back on the record. This
5 is the beginning of videotape number
6 2. It's 12:21.

7 EXAMINATION BY MR. KINNEY:

8 Q. Mr. Jones, we are back on the record.

9 We were -- Before we went off the
10 record we were starting to talk a little
11 bit about Exhibit #2 which you have in
12 front of you.

13 A. Yeah.

14 Q. I would like for you to turn to page --
15 Bates stamp page PAL 1053, and I direct
16 your attention to the bottom of the page
17 where it begins a section entitled
18 Rehabilitation.

19 Do you see that?

20 A. Yes, I do.

21 Q. Okay. Do you recall -- The time that you
22 looked at this document at Mr. Simon's work
23 space, did you read the section on
24 rehabilitation?

25 A. I might have eyeballed it. I -- you know,

26

1 not to commit it to memory or anything.

2 Q. Okay. Do you recall whether you read it or
3 not?

4 A. Not any particulars, no.

5 Q. Did this section have any influence on the
6 way you handled Ms. Mathews' claim for
7 rehabilitation benefits?

8 A. No. I can't say that.

9 Q. Now, let's go to Exhibit #8.

10 Did you find that?

11 A. Yes, I did.

12 Q. Have you ever seen that document before?

13 A. Yes.

14 Q. Okay. There's some handwriting in the
15 margins of this document.

16 Do you see that?

17 A. Yes, I do.

18 Q. Okay. Do you know whose handwriting that
19 is?

20 A. That would be mine.

21 Q. Okay. Good.

22 Well, I would like for you to start by,
23 if you can, reading the handwriting that is
24 in the left margin of the first page of
25 Exhibit #8.

26

1 A. Okay. Had phone conversation where this
2 was explained on 5/26.

3 Q. Okay. Can you tell what it was that you
4 were referring to that was explained?

5 In other words, there was something in
6 the body of the letter that you thought had
7 previously been explained.

8 Is that right?

9 A. Right.

10 Q. Can you tell what it was that had already
11 been explained?

12 A. Well, from what I'm looking at, it seems to
13 be referring to the first sentence of this
14 paragraph.

15 Q. Okay. And had you had a conversation with
16 Ms. Mathews on May 26 in which you had
17 explained something about that information?

18 A. I don't believe that I did, because I
19 typically don't actually talk to insureds.

20 This would have been a note referring
21 to a conversation that Elaine would have
22 had with her. Elaine as in Elaine Bourg.

23 Q. Okay. And how would you know whether
24 Elaine Bourg had had a conversation with
25 the plaintiff on May 26?

26

1 A. Because Elaine would tell me.

2 Q. She would just orally tell you that?

3 A. Yeah. She would mention that she spoke to
4 somebody regarding whatever the issue of
5 the day was.

6 Q. Okay. Well, do you have any idea when you
7 received Exhibit #8 -- without the
8 handwritten notes -- but when you received
9 the letter that is the typed portion of
10 Exhibit #8?

11 A. No. Other than the fax -- the fax date and
12 time indicator at the top of the letter.

13 Q. That would seem to indicate August 23?

14 A. Yes.

15 Q. Okay. When you received this letter, let's
16 say on or about August 23, 2006, did you
17 ask Ms. Bourg if she had explained some
18 things to Ms. Mathews in the past?

19 A. Yes, I probably would ask her.

20 Q. Okay. And she was able to tell you that,
21 yes, she had on May 26th?

22 A. Well, yes, that's what my note indicates,
23 unless I got that wrong.

24 Q. Okay. Do you know does -- Strike that.

25 Did Ms. Bourg keep records of telephone
26

1 conversations that she had with insureds?

2 A. She did on occasion. She had a little note
3 pad or something she would scribble stuff
4 on.

5 Q. Okay. Do you see in the first paragraph --
6 Strike that.

7 Do you see in the second paragraph that
8 we are currently focused on here Ms.
9 Mathews indicates that she was concerned
10 that the sum total that was deducted from
11 her account did not equal the amount that
12 was refunded?

13 A. Yes, I see her writing about those concerns
14 in the letter.

15 Q. Okay. And you understood that what
16 happened had been explained to her.

17 Is that right?

18 A. Yes, that's correct.

19 Q. And that Ms. Bourg had explained it to her?

20 A. Yes.

21 Q. Okay. And do you know what explanation Ms.
22 Bourg gave to Ms. Mathews?

23 A. No. I can't say for sure what she told Ms.
24 Mathews.

25 Q. Okay. Do you see the last sentence of that
26

1 paragraph that says, the reimbursed amounts
2 of 40680 and 53457 not only did not include
3 two months premiums totaling 21054, but
4 also the amount of \$37.70 that has
5 continued to be deducted monthly until this
6 last period ending 8/16/06?

7 Do you see that?

8 A. Yes, I do.

9 Q. Okay. Did that cause you to do anything?

10 A. Beyond wonder what she was referring to?

11 Q. Yes.

12 A. I don't recall what it made me do at this
13 particular moment.

14 Q. Okay. I want you to look at the
15 handwritten portion next to the right side
16 of that paragraph.

17 Now, I wonder if you could read that
18 into the record.

19 A. Our records show that the annual premiums
20 were deducted in error on 4/12/06. The
21 record amounts did not include premium --
22 something cut off -- needed to keep the
23 policy in force because she was off of
24 disability as stated by her physician.

25 Q. That wasn't actually true. Was it?

26

1 A. I'm sorry?

2 Q. It wasn't true that her physician stated
3 that she was off of disability?

4 A. This would be referring to the initial
5 attending physician statement that
6 indicated that she would have returned to
7 work on March 15.

8 Q. Were you concerned at all with Ms. Mathews'
9 statement that \$37.70 has continued to be
10 deducted monthly?

11 A. I think I would have been wondering what
12 she was referring to.

13 Q. Okay. Do you recall checking with Pan Am
14 to find out if it was true that \$37.70 was
15 being deducted monthly?

16 A. Yes, I recall doing some kind of -- doing a
17 search to try to figure out what she was
18 referring to.

19 Q. And did you find out?

20 A. Eventually I did.

21 Q. Okay. How did you find out?

22 A. Eventually I found that she had another
23 policy in the system. She had a third
24 policy, and that was the -- that's what she
25 was referring to with the \$37.70.

26

1 Q. That's what you found out.

2 My question is how did you find that
3 out?

4 A. Well, probably somebody came across it in
5 customer service and let me know.

6 Q. Do you have a recollection as you sit here
7 today, or are you just assuming that that's
8 what happened?

9 A. I am anticipating that that is how it
10 occurred.

11 They would have said, hey, there's
12 another policy, and then I would have had
13 to hunt for it.

14 Q. Okay. Let's go down to the next marginal
15 notation.

16 Do you see -- Do you see right beneath
17 the one you just read there is what looks
18 to me like a question mark and the writing
19 makes no sense.

20 Do you see that?

21 A. Yes.

22 Q. What was it that caused you to write makes
23 no sense?

24 A. Because it didn't make sense to me.

25 Q. What didn't?

26

1 A. Her sentence.

2 Q. Which reads?

3 A. Your recent letter insinuated that it was a
4 new policy.

5 Q. Okay. You didn't understand why she
6 thought that you thought that. Right?

7 A. I didn't understand why she thought that I
8 thought -- that I was --

9 Q. That it was a new policy?

10 A. Yes, I would agree with that.

11 I didn't understand why she would think
12 I -- I didn't understand where she was
13 going with the sentence.

14 Q. Okay.

15 A. So I just made a note to myself.

16 Q. Do you understand it now?

17 A. Oh, sure, I do.

18 Q. Well, what do you understand now?

19 A. I understand that she had a third policy
20 and that that policy was withdrawing
21 premiums, and as it was withdrawing
22 premiums it should have been on -- it
23 should have been on waiver.

24 Q. Okay. My question is the sentence your
25 recent letter insinuated that it was a new
26

1 policy, that didn't -- that sentence didn't
2 make sense to you back in August, 2006?

3 A. Not to my recollection.

4 Q. Okay. Does it make sense to you now?

5 A. No. Because I don't believe that my letter
6 insinuated anything.

7 Q. Okay. Remember we talked about a letter
8 that you had written, the reservation of
9 rights letter of July.

10 Do you recall our discussion about that
11 earlier today?

12 A. Yes, I do.

13 Q. In which you indicated that -- it's
14 Exhibit #21 -- your policy provides that if
15 a claim occurs within the first two years
16 from the effective date.

17 Do you remember that language we talked
18 about in Exhibit #21?

19 A. Okay. I'm looking at that.

20 Q. Okay. Do you understand now that that was
21 what Ms. Mathews was referring to in her
22 letter of August 23?

23 A. Well, yes, you just explained that.

24 Q. Okay. When you got this letter of August
25 23, did that cause you to go back and look
26

1 through your prior correspondence to her to
2 see what you had said to her?

3 A. I don't recall that happening.

4 Q. You just noted it made no sense, and did no
5 further investigation.

6 Is that right?

7 A. Investigation as far as looking into my own
8 correspondence?

9 Q. Right.

10 A. I don't recall doing that.

11 Q. Okay. You didn't feel that you had any
12 duty to clear anything up with Ms. Mathews
13 regarding something she thought you had
14 insinuated?

15 A. I'm sorry.

16 Would you repeat that?

17 Q. I said you didn't feel you had any duty to
18 Ms. Mathews to clear anything up in
19 connection with something she thought you
20 had insinuated?

21 A. I believe that -- I believe that I think I
22 did try to clear things up with Ms.
23 Mathews, because I don't think I have ever
24 written any one insured as many letters as
25 I wrote to Ms. Mathews to try to clear

26

1 things up.

2 I think I -- I think I refer to that in
3 one of these letters, that I think I
4 wrote -- I sent her maybe 60 to 70 pages of
5 correspondence trying to clear things up
6 for her. So I --

7 Q. Your recollection is you attempted to clear
8 up the fact that your reservation of rights
9 letter was not intended to suggest that she
10 had a new policy?

11 A. I don't recall referring to that
12 specifically. I think that my attempts to
13 clear things up with her were, you know,
14 whatever question that she was raising at
15 the particular time, and I tried to respond
16 to them. Hence the 50, 60, 70 pages of
17 stuff that I ended up sending to her.

18 Q. Okay. I would like you to read the next
19 marginal comment. It makes no sense.

20 A. Oh.

21 The policy's benefit amounts are \$1700
22 and \$500 respectively.

23 Q. Okay.

24 A. Okay. That -- I'm sorry.

25 Q. Okay. I just wanted to hear what you had
26

1 to say.

2 A. Okay.

3 Q. You see she requests a thorough evaluation
4 into the amount awarded to her to the left
5 of the comment you just read?

6 A. Yes.

7 Q. Okay. Did you perform that thorough
8 evaluation for her?

9 A. Yes, I believe I did.

10 She stated that she thought she was
11 supposed to be getting -- supposed to
12 receive between 3,000 and \$4,000 per month
13 in benefits, and after my investigation I
14 don't believe the amount was between 3,000
15 and \$4,000 per month.

16 Q. Did your investigation -- your thorough
17 investigation that you performed at Ms.
18 Mathews' request turn up the third policy?

19 A. Yes. And she was issued benefits in
20 accordance with that policy.

21 Q. Okay. Well, could you read the next
22 portion on the right-hand column that you
23 wrote?

24 A. There was an overpayment of \$800 on policy
25 1257-758.

26

1 Q. How did that happen?

2 A. That happened because Elaine entered -- she
3 entered the wrong amount for a month, and
4 it was an overpayment.

5 Q. Okay.

6 A. So at the time I thought, you know, this is
7 not a good thing to have this overpayment
8 for this month.

9 Q. So I take it you took steps to correct that
10 for future payments?

11 A. Yes.

12 Q. Okay. Now, on the -- at the very bottom of
13 the page there's also handwriting that
14 appears again to say this makes no sense.

15 Do you see that?

16 A. Yes.

17 Q. That's also your handwriting?

18 A. Yes, it is.

19 Q. And what is it that made no sense there?

20 A. The statement here that says all receipts
21 have left the date field blank.

22 I didn't know what she was referring
23 to.

24 Q. Do you now?

25 A. Not right off the top of my head, no.

26

1 Other than -- I recall thinking at the
2 time that she must have been referring to
3 something that was actually on the check.

4 Q. Okay. But now we have seen the EOB's for
5 that period today that left the date field
6 blank?

7 A. Right.

8 Q. Does it make sense to you that she would be
9 concerned about that?

10 A. Not necessarily about the date, because the
11 date field was for our records so that we
12 would know what date we generate the EOB.

13 It wouldn't affect -- that date field
14 doesn't have anything to do with the amount
15 of benefits a person would receive or the
16 time period for which they were receiving
17 them.

18 Q. Okay. And when you read this, it didn't
19 occur to you that when she said receipts
20 that she meant EOB's?

21 A. No. Not when I read it, no.

22 Q. Okay. And were you sending her anything
23 other than checks and EOB's?

24 A. Well, no.

25 Q. So what else could receipts have referred
26

1 to?

2 A. That was my question.

3 Q. Okay. Let's skip on over to the third
4 page, Bates PAL 0739.

5 Do you see that?

6 A. Okay.

7 Q. And we again have marginal handwriting
8 there.

9 Do you see that?

10 A. Yes, I do.

11 Q. That's your writing?

12 A. Yes, it is.

13 Q. What does it say?

14 A. 2,200 is the full benefit due from the
15 policies.

16 Q. Did you subsequently realize that that was
17 incorrect?

18 A. Yes, I did.

19 I corrected it by issuing the benefits
20 due on the third policy.

21 Q. Okay. Now, I want you to go to the third
22 paragraph from the top. It begins as you
23 can imagine.

24 Do you see that?

25 A. Yes.

26

1 Q. Dealing with a severe disability, such as
2 this one, creates enormous stress.

3 Has that been your experience dealing
4 with disabled people, that they are often
5 under enormous stress?

6 MR. EVANS:

7 Objection. Calls for speculation.

8 EXAMINATION BY MR. KINNEY:

9 Q. You can answer.

10 A. Could you repeat the question?

11 Q. Sure.

12 Has that been your experience when
13 dealing with disabled people that they are
14 often under enormous stress?

15 A. I can't say that.

16 Q. The next sentence says, I am so saddled
17 with financial commitments that before I am
18 no longer able to work in my chosen
19 profession of over 30 years that provided
20 me with an adequate income.

21 Do you see that?

22 A. Yes, I do.

23 Q. Okay. And then she writes I want to be a
24 productive citizen once again and am
25 therefore pursuing a career change that
26

1 will allow me to do this.

2 Do you see that?

3 A. Yes, I do.

4 Q. Your insurance policy is the bridge that
5 will allow me the necessary funding to get
6 there.

7 Do you see that?

8 A. Yes, I do.

9 Q. Okay. Was that your understanding of the
10 purpose of your insurance policy was to
11 provide an insured with the bridge to allow
12 the necessary funding to make a career
13 change?

14 A. No.

15 A disability policy is to replace the
16 income that is lost due to a disability.

17 Q. Okay. The next sentence says, anticipating
18 a possible scenario such as this was the
19 primary motivation for my purchasing your
20 company's coverage in the first place.

21 Did you see that when she wrote it?

22 A. Yes, I am looking at it.

23 Q. Were you surprised by that?

24 A. That one sentence?

25 Q. Yes.

26

1 A. I don't recall feeling anything about it.

2 Q. Okay. Did you wonder how the policy had
3 been marketed when you saw that sentence?

4 A. No, not because of that sentence.

5 Q. Do you know anything as you sit here today
6 as to how the policy has been marketed as
7 to rehabilitation benefits?

8 A. No. I've never worked as a producer.

9 Q. Okay. And you have never inquired of
10 anyone else how the policy is marketed on
11 that subject?

12 A. Oh, no.

13 Q. And that information wouldn't influence
14 your decision on whether to pay
15 rehabilitation benefits.

16 Is that right?

17 A. That's correct.

18 Q. Next sentence says, career retraining for
19 me cannot possibly happen without
20 consistency on your part to cover my
21 ongoing living expenses as well as tuition,
22 books, and other student expenses.

23 Do you see that?

24 A. Yes, I do.

25 Q. Okay. Did you think that at this time Ms.

26

1 Mathews had a legitimate concern about
2 consistency by Pan American Life Insurance
3 Company?

4 A. No.

5 Q. You didn't feel that Pan American had been
6 inconsistent in the handling of her matter
7 up until that point?

8 A. No.

9 I felt that you always try to do the
10 best thing you can do. You just try to do
11 the best you can do.

12 Q. The next sentence says, the program I am
13 attempting is a rigorous one and I must
14 have these issues settled so that I can
15 devote my full concentration to performing
16 well.

17 Do you see that?

18 A. Yes, I do.

19 Q. Okay. Does that make sense to you?

20 A. In what context?

21 Q. I mean do you agree that it would be
22 necessary for her to have her issues
23 settled so that she can focus on performing
24 well at retraining?

25 A. You're asking me do I agree?

26

1 Q. Yes.

2 A. I don't know what kind of circumstances she
3 needs in order to perform well.

4 Q. Okay. And it was not a concern of yours
5 one way or the other whether or not she
6 needed issues settled in order to perform
7 well?

8 A. You're asking me if I felt personally --

9 Q. Yes.

10 A. -- involved with her circumstances?

11 Q. I'm asking you if that was a matter that
12 concerned you?

13 A. I can't say that those were the things
14 going through my mind. I think basically
15 my concerns came down to making sure that
16 the policy was being evaluated as well as I
17 could evaluate it.

18 Q. Okay. Let's go to the next paragraph.

19 As for my rehabilitation plans, I
20 previously began working on a bachelor's
21 degree, but realized it would be of no
22 benefit to my scope of practice, pay scale,
23 or work setting.

24 Do you see that?

25 A. Yes, I do.

26

1 Q. Okay. Now all that has changed for me. To
2 work as closely with patients in the
3 diagnosis, treatment planning, and patient
4 care in medicine as I did in dentistry, I
5 will have to earn at least a bachelor's
6 degree, but I am aiming for nurse
7 practitioner certification.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. Did that influence your decision?

11 Those sentences I just read, did they
12 in any way influence your decision as to
13 whether to provide rehabilitation benefits
14 to Ms. Mathews?

15 A. No.

16 Q. No?

17 A. No.

18 Q. They didn't -- They weren't -- They didn't
19 contribute positively or negatively to your
20 decision?

21 A. No.

22 My only response would be to request
23 what is the details of her plan.

24 Q. Okay. So after you received this level of
25 information, it would be your practice to
26

1 request further information.

2 Is that right?

3 A. That's correct.

4 Q. Okay. Let's go on.

5 This can begin in Santa Rosa Junior
6 College, Napa Valley Junior College,
7 Pacific Union College, or Sonoma State
8 University.

9 Do you see that?

10 A. Yes, I do.

11 Q. Okay. Would that influence in any way,
12 that sentence, your decision whether or not
13 to provide rehabilitation benefits?

14 A. No.

15 Q. Okay. Would it require further information
16 from the policyholder?

17 A. Yes.

18 Q. What further information would you need?

19 A. In this particular context?

20 Q. Yes.

21 In the context that she has identified
22 four institutions of higher learning that
23 could provide her with the education that
24 she needs to take this step.

25 A. Well, from my perspective, I would want to

26

1 know which one of these schools, are you
2 actually going to go through the entire
3 program, how long is the program going to
4 be. For instance, a bachelor's degree is
5 generally 120 hours depending on where you
6 go and what your major is. So how many
7 hours do you need to complete it. How long
8 do you anticipate it's going to take. How
9 much is the tuition. How much are the
10 books.

11 If you're going to continue on through
12 the bachelor program and get any kind of
13 graduate degree or certification, how long
14 would that achievement take, how much would
15 it cost, where would you go to get it.

16 We also want to know is it feasible
17 that you could actually, you know, achieve
18 the goals. You know, if somebody was --
19 Like when Christopher Reeves got injured,
20 you know, I recall him making a statement
21 that he would walk again, but if he
22 was -- I mean it's heartwarming, but, you
23 know, is it medically feasible that
24 Christopher Reeves was going to hop out of
25 his wheelchair and go live the life that he
26

1 had before the injury.

2 We would have to make a determination
3 on that.

4 Q. Okay. So you just gave me a lot of
5 questions that this sentence had generated
6 for you?

7 A. Well, yes. I mean I think -- Well, yeah.

8 Your question was what kind of
9 information would we look for.

10 Q. Okay.

11 A. I think that's reasonable.

12 Q. Okay. Some of that information would have
13 to come from Ms. Mathews. Right?

14 A. Yes, some of it would.

15 Q. Okay. Such as her dedication, and what it
16 is that she personally hoped to do?

17 Those kinds of questions. Right?

18 A. Yes.

19 Q. But some of these questions could be
20 answered directly from the institutions of
21 higher learning. Right?

22 Such as the amount of tuition, for
23 example?

24 A. Oh, I see.

25 Yes.

26

1 Q. Right.

2 Did you make any effort to check with
3 any of these institutions to find out what
4 the tuition was?

5 A. No.

6 Q. Is it your practice in a situation like
7 this to check with those institutions to
8 find out information of that sort that is
9 equally available to you and the
10 policyholder?

11 A. No.

12 Q. Okay. Even though the information is
13 available -- equally available to you and
14 the policyholder, you rely entirely on the
15 policyholder to get the information.

16 Is that correct?

17 MR. EVANS:

18 Objection. Calls for speculation.

19 Assumes facts not in evidence.

20 EXAMINATION BY MR. KINNEY:

21 Q. Is that right?

22 A. I'm sorry.

23 Would you repeat the question?

24 MR. KINNEY:

25 Could you read that question back?

26

1 (The requested testimony was read back
2 as follows:

3 Q. Okay. Even though the
4 information is available -- equally
5 available to you and the
6 policyholder, you rely entirely on
7 the policyholder to get the
8 information.

9 Is that correct?)

10 THE WITNESS:

11 Yes. It would be the
12 policyholder's responsibility.

13 EXAMINATION BY MR. KINNEY:

14 Q. All right. Let's continue.

15 I am currently enrolled for fall,
16 beginning today in anatomy at Santa Rosa
17 JC. I finished physiology over the summer
18 and will be eligible to apply to the
19 nursing program at Santa Rosa in October of
20 this year for spring and fall of 2007.

21 Did you gather from that statement that
22 she would like to apply to the nursing
23 program at Santa Rosa?

24 A. Well, she does mention it. So you could
25 assume that that was something she thought

26

1 about.

2 Q. Okay. Was that enough information for you
3 as to what -- Strike that.

4 Was that enough information to allow
5 you to assess her rehabilitation program?

6 A. No.

7 Q. And I continue.

8 I will also pursue the application
9 processes for the other schools. The first
10 step is a two-year program and the
11 possibilities are many to make the next
12 step to nurse practitioner, but it will
13 most likely be an additional two years.

14 Do you see that information?

15 A. Yes.

16 Q. Did that information -- Was that
17 information helpful to you in determining
18 whether or not to grant the disability --
19 Strike that.

20 A. No.

21 Q. Let me ask the question correctly. Since I
22 just stepped all over my own question.

23 Was that information helpful to you in
24 attempting to determine whether to provide
25 rehabilitation benefits?

26

1 A. No. It didn't help me be able to draw any
2 conclusions.

3 Q. Okay. You understood that Ms. Mathews was
4 planning on applying to four institutions
5 of higher learning. Right?

6 A. I don't know what she was intending to do.

7 Q. Well, she says I will also pursue the
8 application processes for the other
9 schools.

10 You read that. Right?

11 A. I'm sorry. I don't know what she ended up
12 doing.

13 She says that she was going to apply.

14 Q. Yeah.

15 A. Okay.

16 Q. Okay. I'm asking about what was happening
17 in this letter. We are not talking about
18 her future yet.

19 I'm asking -- You understood when you
20 saw this letter she was planning on
21 applying to these four institutions of
22 higher learning?

23 A. Yes. That was her statement.

24 Q. Okay. And that her goal was to go into a
25 nursing program and become a nurse

26

1 practitioner. Right?

2 A. That's what she said.

3 Q. Okay. And you understood that until she
4 had applied, she wouldn't know whether she
5 had been accepted to one of these schools.
6 Right?

7 A. Oh, okay.

8 Yes.

9 Q. Okay. So would that mean that you would
10 have to wait until the application process
11 was complete before you decided whether to
12 grant or deny the rehabilitation benefits?

13 A. No, that wouldn't be necessarily the case.

14 Q. You could decide to grant them before you
15 knew whether she had been accepted to these
16 schools?

17 A. Well, I imagine you could -- I mean I
18 imagine you could do anything you wanted to
19 do, but I would want to -- I would want to
20 know did she apply to the program, was she
21 accepted, is she still in the program.

22 I mean you would want to know that she
23 was actually involved in doing something
24 before you could make any kind of decision.

25 Q. Okay. So, in other words, until the
26

1 application process had at least gone
2 forward and you found out whether she had
3 been accepted into the program, you
4 couldn't decide one way or another whether
5 or not to grant the rehabilitation
6 benefits.

7 Right?

8 A. Right.

9 I couldn't make a decision on the
10 information that I had.

11 Q. Okay. So what did you do after receipt of
12 this letter, Exhibit #8, in terms of Ms.
13 Mathews' rehabilitation benefits?

14 A. I believe I sent her a letter asking her
15 for details.

16 MR. EVANS:

17 I have got 1:00. I need to --

18 MR. KINNEY:

19 Let me do this one letter. It
20 won't take too long. I want to get
21 started on it and hear what he has to
22 say about it.

23 MR. EVANS:

24 Well, that's great, but why don't
25 we break for lunch.

26

1 MR. KINNEY:

2 Okay.

3 THE VIDEOGRAPHER:

4 Off the record at 12:58. This is
5 videotape number two.

6 (Off the record.)

7 THE VIDEOGRAPHER:

8 We're back on the record after a
9 lunch break. It's 1:49. This is
10 still videotape number 2.

11 EXAMINATION BY MR. KINNEY:

12 Q. All right. Mr. Jones, we are back on the
13 record. You are still under oath.

14 I am going to ask the court reporter to
15 mark this next exhibit. I believe it's
16 Exhibit #28. I will hand it over to you.

17 (Exhibit #28 was marked for
18 identification.)

19 Do you have that, sir?

20 A. Oh. Yes, I do.

21 Q. Okay. You will see that the top two pages
22 of Exhibit #28, which are Bates stamped PAL
23 0823 and 0824, appear to be a letter.

24 Do you recognize that letter?

25 A. Yes, I do.

26

1 Q. Okay. Did you write this letter?

2 A. Yes.

3 Q. Okay. Do you know when you wrote this
4 letter?

5 A. It's dated August 25, 2006.

6 Q. And is it your understanding that that
7 would be the date that you wrote it?

8 A. Yes.

9 Q. Okay. First, I direct your attention to
10 the first -- the second full paragraph that
11 begins, first, the letter is May 17.

12 Do you see that?

13 A. Yes, I do.

14 Q. Okay. About the middle of that paragraph
15 you wrote, as was explained to you directly
16 in phone conversations, there was no
17 indication in our system that an amount of
18 118961 was drafted.

19 Do you see that?

20 A. Yes, I do.

21 Q. In fact, were you referring to the
22 withdrawals of premium directly from Ms.
23 Mathews' account?

24 A. Yes.

25 Q. Okay. And was it correct that you had no
26

1 record in your system that 118961 had been
2 drafted?

3 A. Yes.

4 Q. That was correct?

5 A. Yes.

6 Q. How do you know that was correct?

7 A. That -- I didn't find that amount when I
8 looked into the system to see what the
9 drafts were.

10 Q. Okay. Well, subsequently you determined
11 that there was actually a third insurance
12 policy.

13 Right?

14 A. Yes.

15 Q. That was -- That was discovered after this
16 August 25, 2006, letter.

17 Correct?

18 A. I don't recall.

19 Q. Well, I guess my question is when you said
20 there's no indication in our system that
21 118961 was drafted, had you considered the
22 amount that had been drafted in connection
23 with the third policy?

24 A. I don't recall right offhand right now.

25 Q. Okay. So then you're unsure at this moment

26

1 whether or not that sentence is correct.

2 Is that correct?

3 A. I'm sorry.

4 Could you rephrase that?

5 Q. If you don't know whether you had taken
6 into account the third policy, how can you
7 know what was the amount that was actually
8 drafted?

9 A. At the time I wrote the letter?

10 Q. Yes.

11 A. That's what I believed.

12 Q. Okay. And today is that still what you
13 believe?

14 A. Well, without any contradictory evidence,
15 yes.

16 Q. Then you state, a total of 115191 was
17 identified as being overdrafted. It was
18 requested that you forward a bank statement
19 illustrating the amount in question.

20 Do you see that?

21 A. Yes.

22 Q. Did you -- Had you asked Ms. Mathews to
23 forward a bank statement illustrating the
24 amount?

25 A. Well, no, I never -- I don't recall

26

1 speaking with her.

2 Q. Well, what made you think that it had been

3 requested that she forward a bank

4 statement?

5 A. A conversation with Ms. Bourg.

6 Q. Ms. Bourg told you that she told Ms.

7 Mathews to forward a bank statement?

8 A. To my recollection.

9 Q. Okay. And why did Ms. Bourg want a bank

10 statement?

11 A. Ms. Bourg would have wanted a bank

12 statement -- I don't believe that she would

13 have. I mean she would have just been

14 responding to me saying that we would need

15 a bank statement.

16 Q. So you told Ms. Bourg that you would need a

17 bank statement. Is that right?

18 A. To my recollection.

19 Q. When did you tell her that?

20 A. Before August 25, 2006.

21 Q. Okay. Before July 12, 2006?

22 A. I have no way of recalling that.

23 Q. So just anytime -- somewhere in the past

24 before August 25, 2006?

25 A. Yes.

26

1 Q. Okay. Did you tell Ms. Bourg what you
2 needed a bank statement for?

3 A. I don't recall.

4 Q. Okay. Well, did you need a bank statement?

5 A. Oh, yes, I would.

6 Q. What for?

7 A. To identify the amount she is referring to
8 in the overdraft fees. She being the
9 insured.

10 Q. Okay. Okay.

11 Go to the next paragraph, the second
12 sentence. Your attending physician,
13 Dr. Alexander, provided a written statement
14 indicating that you were cleared to return
15 to work on March 15, 2006.

16 Do you see that?

17 A. Yes, I do.

18 Q. Did you believe that was true when you
19 wrote this on August 25, 2006?

20 A. Yes, because that's what the attending
21 physician statement said.

22 Q. Well, did it say she was cleared to return
23 to work?

24 A. To my recollection, the attending physician
25 statement said -- in the section of the
26

1 statement that she was cleared to return to
2 work as of 3/15/06.

3 Q. It didn't just give that as a predicted
4 prognosis. Did it?

5 A. That was the date that was on the sheet.
6 So that's what I went by.

7 Q. Okay. Why don't you go down a couple of
8 more paragraphs to a paragraph that begins
9 on April 3, 2006.

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. That refers to a process whereby Pan
13 American had requested some additional
14 records.

15 A. Uh-huh (affirmative response).

16 Q. And then the last sentence of that
17 paragraph says, while these records were
18 being requested, your policy remained in
19 premium paying status as we had already
20 received information from your initial
21 physician which indicated that you were
22 recovered and able to return to work.

23 Do you see that?

24 A. Yes, I do.

25 Q. What information had you received that Ms.
26

1 Matthews was recovered?

2 A. That would be the attending physician
3 statement that indicated that her date was
4 3/15/06.

5 Q. And nothing else?

6 A. Not to my recollection.

7 Q. Okay. I want you to go to the second page
8 of this letter. Toward the bottom there's
9 a paragraph that begins your letter states.

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. Your letter states my disability
13 began December 14, 2005. So including the
14 60-day waiting period, I was entitled to
15 full benefit compensation beginning
16 February 14, 2006. This has not happened.

17 She is correct on that. Right?

18 A. I'm sorry.

19 What part are you saying she's correct
20 on?

21 Q. She wrote these sentences, that her
22 disability began on December 14, 2005, and
23 she was entitled to full compensation
24 beginning February 14, 2006, and that had
25 not happened.

26

1 Was that correct or not?

2 A. I don't recall that being correct.

3 Q. Do you recall it being incorrect?

4 A. I really don't recall the letter, what she
5 was writing at all. I'm just looking at
6 this now for the first time in a very long
7 time.

8 Q. Okay. Well, let's just go to the next
9 paragraph.

10 It says, as for your rehabilitation
11 plan, Pan American Life will not be
12 extending benefits.

13 Do you see that?

14 A. Yes, I do.

15 Q. Well, why did you write that?

16 A. Because I hadn't received any information
17 that would indicate that she was -- she had
18 a specific plan for her rehabilitation
19 plan, and most likely because in the letter
20 that I was responding to at the time that I
21 was writing this she probably inquired
22 about it.

23 Q. Well, this letter we are looking at,
24 Exhibit #28, if you look at the first
25 paragraph of the first page, do you see

26

1 what letter you were responding to?

2 A. Yes. It says fax August 23, 2006.

3 Q. Okay. And that was Exhibit #8 that we
4 looked at before lunch. Right?

5 A. I'm sorry?

6 Which one?

7 Q. Exhibit #8?

8 A. Okay.

9 Q. Do you recall discussing that with me
10 before lunch?

11 A. Yes, I do.

12 Q. Okay. And do you recall we spent a lot of
13 time talking about her request for
14 rehabilitation that's contained in that
15 letter?

16 Do you recall that discussion?

17 A. Yes.

18 Q. And you indicated to me that you couldn't
19 make a decision one way or another based on
20 the information that was contained in
21 Exhibit #8.

22 Do you recall that testimony?

23 MR. EVANS:

24 Objection. Misstates his
25 testimony.

26

1 EXAMINATION BY MR. KINNEY:

2 Q. Do you recall that testimony?

3 A. I recall stating that on the basis of
4 looking at the letters that were being
5 presented to me at the time, you know, that
6 was my recollection.

7 I don't -- I'm sorry.

8 I was not able at that time to look at
9 the letters that I was writing to her. I
10 was only seeing hers. So, you know, if I
11 have confused a date or two about the
12 sequence of events, then that would be my
13 error.

14 Q. Between receipt of Exhibit #8 of August 23,
15 2006, and writing Exhibit #28 of August 25,
16 2006, did you talk to anyone about Ms.
17 Matthews' request for rehabilitation
18 benefits?

19 A. I don't recall speaking to anyone.

20 Q. Okay. In that same time frame, between
21 August 23, 2006, and August 25, 2006, did
22 you do any investigation on your own into
23 Ms. Mathews' request for rehabilitation
24 benefits?

25 A. How do you mean research, sir?

26

1 Q. Anything at all.

2 A. I don't recall.

3 Q. When you received Exhibit #8 and read it,
4 the letter of August 23, 2006, did you know
5 immediately that Ms. Mathews was not
6 entitled to rehabilitation benefits?

7 A. Immediately?

8 Q. Yes.

9 A. I can't say I would have immediately made
10 that decision as soon as the fax appeared
11 on my desk.

12 Q. But did you immediately make the decision?

13 A. I doubt it. I would have mulled it over.

14 Q. Did anything happen between receipt of the
15 letter of August 23, 2006, and your letter
16 of August 25, 2006, that influenced your
17 decision as to whether or not Ms. Mathews
18 was entitled to rehabilitation benefits?

19 A. No, I don't believe so.

20 Q. Okay. Following sending Exhibit #28 to Ms.
21 Mathews, did you learn that Ms. Mathews had
22 any response to Exhibit #28?

23 A. Oh, I have no, you know, recollection.

24 Q. Okay. You don't recall talking to her
25 yourself?

26

1 A. No, I don't believe I ever spoke with Ms.
2 Mathews.

3 Q. And did someone else tell you that they
4 received a telephone call from Ms. Mathews
5 concerning what you wrote on August 25?

6 A. I don't recall that.

7 Q. All right. Let's mark another exhibit.
8 This would be Exhibit #29.

9 (Exhibit #29 was marked for
10 identification.)

11 I represent to you, sir, that this was
12 a document that was produced by Pan
13 American's attorney in this case. Bates
14 stamp PAL 0818.

15 I ask if you have ever seen this
16 document before?

17 A. No, I don't believe so.

18 Q. If you look at the entry that appears to be
19 dated September 12, 2006, you will see --
20 and this is Ms. Mathews writing -- I told
21 her the account -- I told her about the
22 account I discovered yesterday as well as
23 dealing with the Department of Insurance
24 and the DA.

25 Had you at any time heard that Ms.

26

1 Mathews had discovered the third account
2 that was being withdrawn from her bank
3 account?

4 A. I don't recall when Ms. Mathews was
5 discovering, as you put it, the account. I
6 don't recall anything at this moment.

7 Q. Okay. You don't recall Ms. Bourg coming to
8 you and saying Donna Mathews said there's a
9 third policy?

10 A. Well, I'm sure she must have come to me at
11 some point. I just don't know when that
12 was.

13 Q. Okay. But you do recall that something
14 like that happened at some point. Is that
15 right?

16 A. Right.

17 That's how I was able to issue the
18 benefits on the third policy.

19 Q. Okay. Did you hear at some point that
20 Donna Mathews had filed a complaint with
21 the California Department of Insurance?

22 A. Sure. At some point I would have heard.

23 Q. Okay. Was this the first time that a
24 policyholder had ever made a regulatory
25 complaint about a claim that you were
26

1 handling?

2 A. I have no recollection.

3 Q. Do you recall any other regulatory

4 complaints that had been made by

5 policyholders about claims that you were

6 handling?

7 A. I know there have been complaints. I --

8 you know, I don't mark down when they

9 happen in a date book or anything. I mean

10 it's not like something I would carry

11 around personally with a -- thinking about.

12 Q. Okay. Was this the first time that a

13 policyholder had ever made a complaint to a

14 district attorney about any claim that you

15 were handling?

16 A. I have no recollection of that. I have no

17 idea when that would happen.

18 Q. Okay. Have there been other policyholders

19 that have made complaints to district

20 attorneys about claims that you were

21 handling?

22 A. I don't know who they made complaints to.

23 I mean if people make complaints, I mean

24 it's not like the DA would pick up the

25 phone and call me.

26

1 Q. Okay. So there may be complaints that you
2 don't know about?

3 A. Yes.

4 Q. Okay. But leaving aside the complaints
5 that you don't know about, just talking
6 about complaints that you do know about,
7 have there been any other complaints that
8 you do know about by policyholders to
9 district attorneys about claims that you
10 were handling?

11 A. No, I don't know that.

12 THE VIDEOGRAPHER:

13 Excuse me. I need to change
14 tapes.

15 MR. KINNEY:

16 Sure.

17 THE VIDEOGRAPHER:

18 We are going off the record at
19 2:10. This is the end of videotape
20 number 2.

21 (Off the record.)

22 THE VIDEOGRAPHER:

23 We're back on the record. This is
24 the beginning of videotape number 3.
25 It's 2:11.

26

1 EXAMINATION BY MR. KINNEY:

2 Q. When you found out that Ms. Mathews had
3 made a complaint to a district attorney
4 about a claim that you were handling, were
5 you upset?

6 MR. EVANS:

7 Objection. Misstates his
8 testimony.

9 EXAMINATION BY MR. KINNEY:

10 Q. You can answer.

11 A. No, I wouldn't be upset by something like
12 that. It's just how life is. I mean I
13 have been threatened. You know, people
14 call and say they are going to blow up the
15 building and kill us all. It's just part
16 of the business.

17 Q. You have a lot of people angry at you
18 because of the way you handle disability
19 claims?

20 A. Oh, no. I don't believe so.

21 I was thinking -- I'm sorry.

22 I was referring to my -- some of my
23 earlier experiences in the industry.

24 Q. Did learning that Ms. Mathews had made a
25 complaint to the California Department of

26

1 Insurance in any way change the way that
2 you handled her claim?

3 A. No.

4 Information comes in, we handle the
5 claim. Whatever is happening -- excuse
6 me -- happening other than the claim, I
7 don't have any concerns.

8 Q. And did learning that Ms. Mathews had made
9 a complaint to her local district attorney
10 in any way change the way you handled her
11 claim?

12 A. No.

13 Q. Let's go to the next document which we will
14 mark as Exhibit #30.

15 (Exhibit #30 was marked for
16 identification.)

17 And I direct your attention to the
18 second page of Exhibit #30, sir.

19 This refers to a payment to Ms. Mathews
20 of \$2000. Does it not?

21 A. Yes, it does.

22 Q. Okay. And what was that payment for?

23 A. Benefits for her disability income policy.

24 Q. Okay. And for what period were those
25 benefits paid?

26

1 A. It was for February 14, 2006, to June 14,
2 2006.

3 Q. And when was the payment made?

4 A. That would be September 13, 2006.

5 Q. And why didn't the payment include payment
6 for a period all the way through to
7 September 14, 2006?

8 A. I don't recall.

9 Q. Did you direct Ms. Bourg to pay these
10 specific four monthly benefits?

11 A. Yes, I would have directed her.

12 Q. And at the bottom right corner you read the
13 language this policy has been placed on
14 waiver.

15 Do you see that?

16 A. Yes.

17 Q. Did you instruct Ms. Bourg to write that?

18 A. Yes. That would have been there under my
19 instruction.

20 Q. Okay. Let's mark the next exhibit as
21 Exhibit #31.

22 (Exhibit #31 was marked for
23 identification.)

24 Q. Okay. Can you identify this document, sir?

25 A. Sure. It's a letter from Pan American
26

1 Life.

2 Q. And did you write it?

3 A. Yes, I did.

4 Q. Okay. And what caused you to write this
5 letter?

6 A. Somebody from the department would have
7 notified me about a complaint, and I would
8 have had to issue a response.

9 Q. I would like you to look at the last full
10 paragraph on this page that begins finally
11 Ms. Mathews.

12 Do you see that?

13 A. Yes.

14 Q. Okay. Do you see Ms. Mathews states in her
15 complaint that no explanation was given
16 her -- was given concerning her
17 rehabilitation?

18 Was there an explanation given to Ms.
19 Mathews concerning her rehabilitation?

20 A. I don't recall.

21 Q. Okay. Well, I direct your attention once
22 again to Exhibit #28, second page, toward
23 the bottom, where you wrote, as for your
24 rehabilitation plan, Pan American will not
25 be extending benefits.

26

1 Do you see that?

2 A. Oh, okay.

3 Yes.

4 Q. Was that the only explanation that you gave
5 Ms. Mathews for the denial of her benefits?

6 A. I don't recall. I might have said things
7 on other letters.

8 Q. Then going back to Exhibit #31, you quote
9 policy language there.

10 Do you see that?

11 A. Oh, yes.

12 Q. Okay. And following your quotation of the
13 policy language you state, the
14 rehabilitation portion of the policy is an
15 additional benefit that is disbursed at Pan
16 American Life's discretion.

17 Do you see that?

18 A. Yes, I do.

19 Q. Do you believe that that's correct?

20 A. That's what the policy states.

21 Q. Do you believe that Pan American Life has
22 absolute discretion to decide one way or
23 another on its own whether or not to
24 provide the rehabilitation benefit?

25 MR. EVANS:

26

1 Objection to the extent it
2 mischaracterizes the exhibit.

3 EXAMINATION BY MR. KINNEY:

4 Q. You may answer.

5 A. Would you repeat the question?

6 MR. KINNEY:

7 Would you read the question back,
8 please?

9 (The requested testimony was read back
10 as follows:

11 Q. Do you believe that Pan
12 American Life has absolute discretion
13 to decide one way or another on its
14 own whether or not to provide the
15 rehabilitation benefit?)

16 THE WITNESS:

17 I think that that statement is an
18 extreme interpretation of the policy
19 language.

20 EXAMINATION BY MR. KINNEY:

21 Q. Is it your interpretation of the policy
22 language?

23 A. My interpretation of the policy language
24 was simply to read the policy language and
25 that was that. I didn't try to out think

26

1 it.

2 Q. Okay. The next sentence in Exhibit #31
3 says the rehabilitation benefit is not nor
4 was it ever an entitlement for the insured.

5 Do you see that?

6 A. Yes, I do.

7 Q. What do you mean an entitlement for the
8 insured?

9 A. An entitlement would be like your basic
10 benefit. If you buy a policy for \$2,000,
11 then that's what your insured for. 2,000
12 per month for whatever period of time.

13 Q. And why was the rehabilitation benefit not
14 an entitlement?

15 A. I don't know, sir. I didn't design the
16 policy.

17 Q. Why did you consider it not to be an
18 entitlement?

19 A. Because there was nothing in the policy
20 that said that benefits should be extended
21 along with the basic monthly benefit.

22 Q. Okay. Do you know a person at Pan American
23 named Glenda Griffin?

24 A. I know of her.

25 Q. Do you know what she does?

26

1 A. Somewhat.

2 Q. What?

3 A. She works for Mr. Rowell in the -- I

4 believe in the complaints department.

5 Q. What is the complaints department handling?

6 A. Most likely complaints.

7 Q. You don't know?

8 A. No. I have never worked with them on

9 anything.

10 Q. Have you ever discussed the rehabilitation

11 benefit with Glenda Griffin?

12 A. Not to my recollection.

13 Q. Have you ever written to her about the

14 rehabilitation benefit?

15 A. To?

16 Q. Glenda Griffin.

17 A. I don't believe I have ever written to her,

18 but I don't recall that.

19 Q. Well, let me show you an exhibit that we

20 will mark as Exhibit #32.

21 (Exhibit #32 was marked for

22 identification.)

23 And I will represent to you that this

24 was produced in the course of the

25 litigation by Pan American's attorney.

26

1 I will direct your attention to the
2 last lengthy paragraph two thirds of the
3 way down the page, and the last sentence of
4 that paragraph, which says the
5 rehabilitation benefit is not nor was it
6 ever an entitlement.

7 Do you see that?

8 A. Yes, I do.

9 Q. And that is verbatim a sentence that
10 appears in your letter of October 3, 2006,
11 the rehabilitation benefit is not nor was
12 it ever an entitlement.

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. Do you know how Ms. Griffin came to
16 utilize the same language that you
17 utilized?

18 A. No, I don't.

19 Q. At some point did you decide to place Ms.
20 Mathews under surveillance?

21 A. Yes, I did.

22 Q. Why?

23 A. Because I had her scheduled for a medical
24 examination.

25 Q. And is it your policy whenever you schedule
26

1 someone for a medical examination you put
2 them under surveillance?

3 A. Yes.

4 Q. In every case?

5 A. Budget permitting.

6 Q. And what is the benefit to Pan American
7 Life of engaging in that practice?

8 A. I'm sorry.

9 Could you rephrase that?

10 Q. Yeah.

11 Why does Pan American Life put every
12 policyholder who is going to go to an
13 independent medical examination under
14 surveillance?

15 A. Well, in my opinion I think it helps us to
16 make sure that we get the payment of the
17 claim correct.

18 Q. I'm sorry?

19 I didn't hear it.

20 A. I said --

21 THE COURT REPORTER:

22 Do you want me to read it back?

23 MR. KINNEY:

24 Yeah. Could you read it back?

25 (The requested testimony was read back

26

1 as follows:

2 A. Well, in my opinion I think
3 it helps us to make sure that we get
4 the payment of the claim correct.)

5 EXAMINATION BY MR. KINNEY:

6 Q. Okay. How does it help that?

7 A. It helps us determine the person's
8 disability.

9 Q. What percentage of policyholders of
10 disability claims are sent to an
11 independent medical examination?

12 A. I wouldn't know that right offhand.

13 Q. Can you give me a rough estimate?

14 A. No, not really.

15 Q. Is it more than half?

16 A. Half of the people sent to medical
17 examination?

18 Q. Half of the claims that come in go to
19 independent medical examination?

20 A. No, I don't think it would be half.

21 Q. When you decided to put Ms. Mathews under
22 surveillance, what information did you
23 think you might gain from the surveillance
24 itself that would inform your decision on
25 Ms. Mathews' claim?

26

1 A. I didn't have a particular goal other than
2 to try to buttress the disability claim.

3 Q. How would putting Ms. Mathews under
4 surveillance buttress her disability claim?

5 A. Well, I wanted to make sure she was
6 actually going to show up for the medical
7 examination, and surveillance would be a
8 good way for me to make sure. In addition
9 to making sure we get the report.

10 Q. Well, wouldn't the doctor tell you if she
11 had failed to show up for her medical
12 examination?

13 A. They would tell me if she failed to show
14 up, yes.

15 Q. Isn't putting her under surveillance a
16 rather expensive way of confirming whether
17 or not the doctor is right on whether she
18 showed up?

19 A. Not to my mind.

20 Q. How much does it cost Pan American to put
21 someone under surveillance?

22 A. It depends.

23 Q. Do you know how much it cost in this case
24 to put Ms. Mathews under surveillance?

25 A. No.

26

1 Q. Is that a factor -- cost, is that a factor
2 that you weigh in deciding whether to put
3 somebody under surveillance?

4 A. No, I wouldn't say that.

5 Q. Okay. Do you have to get approval from
6 anybody to authorize surveillance against a
7 policyholder?

8 A. Yes, I do.

9 Q. Would do you get approval from?

10 A. Mr. Simon.

11 Q. Has he ever turned down a request for
12 surveillance?

13 A. I'm sure it must have happened.

14 Q. You don't recall it though?

15 A. No.

16 Can I -- Can I get some more water?

17 Q. Oh, of course.

18 THE VIDEOGRAPHER:

19 Going off the record at 2:30.

20 This is videotape number 3.

21 (Off the record.)

22 THE VIDEOGRAPHER:

23 We are back on the record. This
24 is videotape number 3. It's 2:31.

25 EXAMINATION BY MR. KINNEY:

26

1 Q. Other than showing whether Ms. Mathews
2 showed up for her independent medical
3 examination, was there any other
4 information that you thought a surveillance
5 of her might provide that would help you in
6 deciding whether to pay her benefits?

7 A. Well, I wouldn't have really known what
8 kind of information would help me until I
9 actually got back the tape. So I didn't
10 think of anything in particular when I was
11 making the order.

12 Q. Did the surveillance affect in any way your
13 decision whether to pay her benefits?

14 A. No, because she's currently receiving
15 benefits.

16 Q. So a surveillance -- Am I right, a
17 surveillance never helps the policyholder?

18 It only -- You only use it to decide
19 not to pay benefits. Right?

20 A. I didn't say that.

21 MR. EVANS:

22 Objection. Misstates his
23 testimony.

24 EXAMINATION BY MR. KINNEY:

25 Q. Does this surveillance sometimes help a
26

1 policyholder?

2 A. Yes.

3 Q. When?

4 In what sort of circumstances?

5 A. Could you be more specific?

6 Q. I don't think so.

7 A. Okay.

8 Q. Under what circumstances does a

9 surveillance help a policyholder?

10 A. I mean that's a very wide ranging question.

11 We could be here the rest of the day.

12 Q. Okay. Well, let me ask you this.

13 Has there ever been a case that you

14 have had before you where you had -- you

15 were pretty sure you were going to deny the

16 benefits, and then you got the surveillance

17 back and it changed your mind?

18 A. Well, I'm never really pretty sure that I

19 am going to do anything. I try to keep an

20 open mind and stay unbiased when it comes

21 to the claims process. So I don't go into

22 evaluating a claim with any kind of

23 preconceived notion as to what I might

24 find.

25 Q. Did your decision to put Ms. Mathews under

26

1 surveillance have anything to do with the
2 fact that she had filed complaints with the
3 Department of Insurance or the district
4 attorney?

5 A. No.

6 Q. Why did you wait until October, 2006, to
7 put Ms. Mathews under surveillance?

8 A. I believe that's when we had the -- when we
9 were able to get the medical exam
10 scheduled.

11 Q. Do you always put people under surveillance
12 for the date of their medical exam?

13 A. I try to.

14 Q. Okay. When did you decide to schedule a
15 medical examination for Ms. Mathews?

16 A. Oh, I don't recall the date.

17 Q. Okay. Well, her claim came in, and you
18 started paying benefits back in February.
19 Effective February, 2006.

20 Do you recall that?

21 A. Yes.

22 Q. Okay. And her medical examination didn't
23 occur until sometime in October of 2006.

24 Right?

25 A. I don't really recall when it happened,
26

1 but --

2 Q. Actually November, 2006, is when it
3 happened.

4 A. Okay.

5 Q. So how come there was some eight or nine
6 months between the time the claim came in
7 and the time of the medical examination?

8 A. It can be a challenge to get these medical
9 examinations scheduled.

10 Q. Typically it takes eight or nine months to
11 schedule a medical examination?

12 A. I didn't say that.

13 Q. Well, is that kind of long in your
14 experience to wait for a medical
15 examination?

16 A. I don't recall waiting eight or nine months
17 for a medical examination.

18 Q. How long was it after the claim came in
19 that you decided to schedule Ms. Mathews
20 for a medical examination?

21 A. Oh, I don't recall.

22 Q. More than six months?

23 A. I don't recall.

24 Q. More than eight months?

25 A. I don't recall.

26

1 Q. Did something happen in the course of this
2 claim that made you decide to schedule Ms.
3 Mathews for a medical examination?

4 A. Just the medical notation.

5 Q. What medical notation?

6 A. Just in trying to make sure I had a good
7 grip on the claim and understanding what
8 her medical condition was. I wanted to get
9 -- I just wanted to be right about what I
10 was doing.

11 Q. But you always wanted to be right about
12 what you were doing from the first day the
13 claim came in.

14 Right?

15 A. That's correct.

16 Q. So that didn't change in the course of the
17 nine months -- eight or nine months that
18 passed until the medical examination.

19 Right?

20 A. I'm sorry.

21 You said change?

22 Q. Yes.

23 I'm asking if something happened during
24 this claim that made you decide to schedule
25 a medical examination.

26

1 A. I mean I can't recall anything specific.

2 Q. Okay. Let's go to another exhibit. Mark

3 this one as Exhibit #33.

4 (Exhibit #33 was marked for

5 identification.)

6 A. Okay.

7 Q. Have you ever seen this document before?

8 A. I'm sure I have.

9 Q. Do you recall it?

10 A. I'm sorry?

11 Q. Do you recall it?

12 A. Somewhat.

13 Q. Okay. Do you know when Pan American

14 received this document?

15 A. Yes.

16 Q. When?

17 A. The date stamp says received November 2,

18 2006.

19 Q. Okay. I would like to go to the bottom

20 paragraph on the first page of this

21 document. It begins finally.

22 Do you see that?

23 A. Okay.

24 Yes.

25 Q. Finally, the rehabilitation portions of my

26

1 policy are, as you state, disbursed at Pan
2 American Life's discretion. Can you tell
3 me what would justify rehabilitation.

4 Do you see that?

5 A. Yes, I do.

6 Q. Did you ever respond to that question?

7 A. I don't recall right now.

8 Q. Okay. As you sit here today, if you were
9 to respond to this question, how would you
10 respond?

11 A. There's a number of things she is saying
12 here.

13 Which particular part would you like to
14 address?

15 Q. Well, she has written you a letter, and she
16 says can you tell me what would justify
17 rehabilitation.

18 Do you see that question?

19 A. Yes.

20 Q. Okay. If you were going to write back to
21 her and answer her question, what would you
22 say?

23 A. Well, probably the same things I said when
24 she initially asked for the rehabilitation
25 benefit. We need to have a plan.

26

1 Q. Okay. You wouldn't tell her what kinds of
2 things needed to be in the plan?

3 A. I wouldn't tell her what to do with her
4 life. I mean I'm not a -- What do you
5 call -- an occupational counselor to tell
6 her what she should do or what she is
7 capable of doing.

8 I would rely on the insured to bring
9 that information to us.

10 Q. Okay. Go to the next sentence of the
11 paragraph. Is there a company policy
12 regarding rehabilitation.

13 Do you see that?

14 A. Yes, I do.

15 Q. Did you answer that question?

16 A. I don't recall.

17 Q. If you were to answer that question today,
18 how would you answer it?

19 A. Yes.

20 Q. And what is the policy?

21 A. The policy is that the insured would
22 provide whatever their plan is, and we
23 would evaluate it.

24 Q. Okay. Finally, the next sentence in the
25 same paragraph, do you ever approve this

26

1 benefit or make exceptions, or could I make
2 an appeal for this benefit.

3 Do you see that question?

4 A. Yes, I do.

5 Q. Did you answer that question?

6 A. I don't recall.

7 Q. If you were going to answer that question
8 today, how would you answer it?

9 MR. EVANS:

10 Objection. The question is
11 compound. Not your question, but the
12 question that you are referring to is
13 compound.

14 EXAMINATION BY MR. KINNEY:

15 Q. All right. Well, let's take it piece by
16 piece.

17 She asked do you ever approve this
18 benefit or make exceptions.

19 How would you answer that question if
20 you answered it today?

21 A. From my perspective I think that is asking
22 about Pan American Life's business
23 practices.

24 Q. It may well be.

25 How would you answer it?

26

1 A. I don't believe I would really have an
2 answer about the internal workings of Pan
3 American Life to an insured.

4 Q. You personally couldn't answer that
5 question.

6 Is that right?

7 You personally couldn't answer the
8 question do you ever approve this benefit
9 or make exceptions?

10 A. No, I wouldn't feel comfortable crafting
11 any kind of response to that.

12 Q. Okay. So who at Pan American could answer
13 that question?

14 MR. EVANS:

15 Objection. Calls for speculation.

16 EXAMINATION BY MR. KINNEY:

17 Q. If you know.

18 A. I couldn't say I would know that.

19 Q. How about Mr. Simon? Would he be able to
20 answer that question to your knowledge?

21 A. I don't know all the things that Mr. Simon
22 is capable of doing.

23 Q. And particularly you don't know whether
24 he's capable of answering this question?

25 A. You would have to ask Mr. Simon.

26

1 Q. Because you don't know?

2 A. That's correct.

3 Q. Okay. And then the second part of her
4 question which was could I make an appeal
5 for this benefit.

6 Do you see that question?

7 A. Yes, I do.

8 Q. What's the answer to that?

9 A. Yes, she can make an appeal.

10 Q. Did you tell her that?

11 A. I'm sorry?

12 Q. Did you tell her?

13 A. I don't recall.

14 Q. How does -- How would she have gone about
15 an appeal?

16 A. By requesting the benefit.

17 Q. How does it get to the appeal level?

18 A. If she wanted to appeal a decision, she
19 could send a letter saying I would like to
20 appeal the decision.

21 Q. And what would happen then?

22 A. It would be reevaluated.

23 Q. Who would do the reevaluation?

24 A. Probably myself or -- Myself really.

25 Q. So if Ms. Mathews wants to appeal an
26

1 adverse decision that you made, she could
2 appeal to you to reevaluate your own
3 decision?

4 A. Yes, she could.

5 Q. And there's no other appeal that's
6 available?

7 A. I couldn't answer that. I mean I am just
8 telling you what I could do.

9 Q. Okay. But I'm asking about the way the
10 process works at Pan American.

11 Your not aware of any other appeal
12 process that's available other than that.

13 Is that correct?

14 A. No, I can't say that I'm aware of another
15 appeal process.

16 Q. Okay.

17 MR. EVANS:

18 I'm sorry.

19 Can we take five minutes?

20 MR. KINNEY:

21 Absolutely.

22 Off the record.

23 THE VIDEOGRAPHER:

24 We are going off the record. This
25 is videotape number 3. It's 2:44.

26

1 (Off the record.)

2 THE VIDEOGRAPHER:

3 We are back on the record. This

4 is videotape number 3. It's 2:51.

5 EXAMINATION BY MR. KINNEY:

6 Q. Okay. Let's go to another exhibit we will

7 mark as Exhibit #34.

8 (Exhibit #34 was marked for

9 identification.)

10 It's Bates stamped PAL 0137.

11 Mr. Jones, have you ever seen this

12 document before?

13 A. Yes.

14 Q. And what is the date on this document?

15 A. October 27, 2006.

16 Q. And what was the purpose of this letter?

17 A. Off the top of my head I believe the

18 response was to identify the premium

19 refunds to the insured for the dollar

20 amount and the dollar amount according to

21 which policy they belong to.

22 Q. Okay. Let's go to the next document which

23 would be Exhibit #35.

24 (Exhibit #35 was marked for

25 identification.)

26

1 Do you have that, sir?

2 A. Yes, I do.

3 Q. Okay. And what is that?

4 A. This a letter from me at Pan American Life
5 to the insured.

6 Q. Okay. And what's the date on that?

7 A. That is dated November 6, 2006.

8 Q. Okay. I direct your attention to the third
9 paragraph which begins also Ms. Bourg.

10 Do you see that?

11 A. Yes.

12 Q. It says also Ms. Bourg did not inform you
13 that a third party did not exist. She
14 simply stated that she was only able to
15 find two policies on record for you at the
16 time of your conversation.

17 How did you know that a conversation
18 between Ms. Bourg and Ms. Mathews had gone
19 on on that subject?

20 A. Because Ms. Bourg would have informed me.

21 Q. And do you recall what she said about that
22 conversation?

23 A. She said she did not -- Well, what I recall
24 Ms. Bourg telling me about the conversation
25 is what I put in the letter.

26

1 Q. You don't recall anything else other than
2 that?

3 A. No.

4 Q. Go a couple of sentences on, it says, on
5 September 12, 2006, I was able to locate a
6 third policy within our system and issue
7 benefits accordingly.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. When you -- Is that accurate, that
11 you located the third policy on September
12 12?

13 A. I believe it to be.

14 Q. Okay. And did you locate that third policy
15 in response to an inquiry from Ms. Mathews?

16 A. Yes.

17 Q. Then that same paragraph goes on to discuss
18 a statement by Ms. Mathews about a
19 telephone conversation.

20 Do you see that?

21 Also in your letter you state that you
22 were assured by you and Elaine Bourg only
23 via telephone conversation?

24 A. That's correct.

25 Q. Okay. And then you responded, Ms. Mathews,

26

1 I never had a telephone conversation with
2 you.

3 Is that right?

4 A. That's my response.

5 Q. Okay. And was that correct, that at that
6 time you did not have a telephone
7 conversation?

8 A. I believe it to be.

9 Q. Okay. Were you present when Ms. Bourg had
10 a telephone conversation with Ms. Mathews?

11 A. I imagine so. I mean I don't take days
12 off. I'm always in the building.

13 Q. And how far is your work station from Ms.
14 Bourg's?

15 A. Well, very far. Ms. Bourg doesn't work
16 here anymore.

17 Q. At the time of November 6, 2006.

18 A. Oh. Oh, I'm sorry. I see what your
19 saying.

20 No. We were on the same floor. We
21 were in the same -- what do you call --
22 like vicinity.

23 Q. Right next to each other?

24 A. In cubes, yes.

25 Q. Okay. And could you hear Ms. Bourg's side
26

1 of a telephone conversation?

2 A. Generally no.

3 Q. But occasionally were there situations

4 where you could?

5 A. Well, sure, if she was on the phone with a

6 friend and they were laughing or something,

7 I could hear her laughing.

8 Q. Were there occasions when Ms. Bourg was on

9 the phone with a customer where she would

10 just ask you a question to -- about the

11 claim so that she could just tell the

12 customer right then?

13 A. I'm sure it could have happened.

14 Q. Do you recall it happening with Ms.

15 Mathews?

16 A. No.

17 Q. Okay. Turn to page 2, the first full

18 paragraph up at the top there, the check

19 for policy 1257-573.

20 Do you see that?

21 A. Yes.

22 Q. Was there yet another mistake on payments

23 for Ms. Mathews that you corrected with

24 this letter of November 6?

25 A. I don't know what you mean by yet another

26

1 mistake.

2 Q. Well, I see here it says the check for
3 policy 1257-758 in the amount of \$200 was
4 paid incorrectly due to a clerical error.

5 Do you see that?

6 A. Oh, yes.

7 Q. Okay. Was that -- What I want to know is
8 was that a new mistake, or does that refer
9 to an old mistake?

10 A. I don't recall the timing sequence.

11 Q. Okay. I want you to go onto the last
12 lengthy paragraph on that page that begins
13 with you have received.

14 Do you see that?

15 A. Yes.

16 Q. You have received a refund for all the
17 premiums we have on record as paid.

18 Do you see that?

19 A. Yes.

20 Q. Was that correct as of this date?

21 A. Yes, I believe it to be.

22 Q. And then you write in the future please
23 refrain from continuing to forward premiums
24 once you have been placed on waiver.

25 Do you see that?

26

1 A. Yes.

2 Q. Why did you write that?

3 A. Because to my recollection she had been
4 placed on waiver, and she was actually
5 still sending in premium payments.

6 Q. Had she ever sent in a premium payment to
7 your recollection?

8 A. Oh, I have no idea. I mean I don't work in
9 billing.

10 Q. But you knew she wasn't sending in any
11 premium payments. Didn't you?

12 A. I'm sorry. I don't deal with premium
13 payments.

14 Q. Well, didn't you realize that the payments
15 were being withdrawn directly from her
16 account?

17 A. Well, sure, I realized that when she called
18 and started yelling at everybody.

19 Q. That was long before this November 6th
20 letter. Right?

21 A. I believe so.

22 Q. So you knew she wasn't sending in any
23 premium payments. Right?

24 A. No, I can't say that, because in the letter
25 I asked her to not forward any premiums.

26

1 So as I am reading this letter today, I
2 would believe that I wrote that sentence in
3 response to her forwarding some premiums.

4 Q. So you believe you found out that she was
5 no longer on automatic withdrawal of
6 premiums and had started forwarding the
7 premiums through payments that she was
8 making to Pan Am.

9 Is that right?

10 A. I'm sorry.

11 Would you state that again?

12 Q. You had found out prior to November 6,
13 2006, that premiums were no longer being
14 automatically withdrawn from her bank
15 account.

16 Right?

17 A. I attempted previously to that date to make
18 sure that no premium was being withdrawn
19 from her account in error, and those were
20 my actions.

21 Q. Okay. And did you find out that she had no
22 longer authorized withdrawal of premiums
23 from her account?

24 A. Oh, I don't know that she had done that at
25 all.

26

1 Q. Well, did you think she was voluntarily
2 mailing in premiums to Pan American Life
3 Insurance Company when you wrote this
4 letter on November 6, 2006?

5 A. Well, judging from the language of the
6 letter, yes, I think that was my thought at
7 the time.

8 Q. What made you think that?

9 A. I believe that we had actually received a
10 premium payment from her.

11 Q. How had you learned that?

12 A. That information would have come from the
13 billing department.

14 Q. And but for your receipt of that
15 information, you wouldn't have written this
16 sentence that we just went over.

17 Correct?

18 A. That's correct.

19 Q. Because if you thought the payments were
20 being automatically withdrawn, writing a
21 sentence like this would just be to anger
22 the policyholder.

23 Right?

24 MR. EVANS:

25 Objection. Argumentative.
26

1 EXAMINATION BY MR. KINNEY:

2 Q. You can answer.

3 A. Would you say that again, sir?

4 Q. If the payments were being automatically
5 withdrawn and you knew it, the only
6 rationale for a sentence that says stop
7 sending us premiums would be to anger the
8 policyholder.

9 Isn't that correct?

10 MR. EVANS:

11 Objection. Calls for speculation.
12 Argumentative.

13 EXAMINATION BY MR. KINNEY:

14 Q. Go ahead.

15 A. Sir, I mean the only thing I'm trying to
16 accomplish in any of the letters that I
17 send to insureds is to finish the claim
18 evaluation and make sure everyone is on the
19 same page about what is happening on the
20 policy. I don't have any other reason to
21 write a letter.

22 Q. You weren't personally angry at Ms. Mathews
23 at this point, November 6, 2006?

24 A. Oh, no.

25 Q. And you weren't doing anything to try to
26

1 anger her.

2 Is that right?

3 A. That's correct.

4 I wouldn't do that.

5 Q. All right. Let's mark Exhibit #36.

6 (Exhibit #36 was marked for
7 identification.)

8 Before we go into Exhibit #36, I want
9 to go back to a question I still have over
10 the last exhibit, Exhibit #35, that we were
11 just talking about.

12 In Exhibit #33, which was the letter of
13 October 24, 2006, from Ms. Mathews to you,
14 she had asked some questions.

15 Do you recall at the bottom of the page
16 there we talked about those?

17 A. On the second page?

18 Q. Yeah.

19 She asked some questions, you know, can
20 you tell me what would justify a
21 rehabilitation, and we went over those a
22 little bit ago.

23 A. Uh-huh (affirmative response).

24 Q. Exhibit #33 was received on what date by
25 Pan American?

26

1 Exhibit #33?

2 A. That is stamped November 2, 2006.

3 Q. Okay. And then we have a letter from you,

4 Exhibit #35, dated November 6, 2006?

5 A. That's correct.

6 Q. Four days later.

7 Do you see that?

8 A. Yes, I do.

9 Q. I will represent to you that I was not able
10 to find anything in the file that was a
11 correspondence from you to Ms. Mathews
12 between November 2 and November 6.

13 My question to you is why in your
14 letter of November 6, 2006, didn't you
15 answer her questions that she wrote on the
16 bottom of Exhibit #33?

17 A. I can't think of any particular reason why
18 I wouldn't have other than I made an error.

19 Q. Let's go on to Exhibit #36.

20 Do you have that in front of you?

21 A. Yes, I do.

22 Q. That's the Stanford University Medical
23 Center?

24 A. Yes.

25 Q. What is this document, Exhibit #36?

26

1 A. It is a report from Dr. Date.

2 Q. And what -- How did Dr. Date come into the
3 picture here?

4 Who is Dr. Date?

5 A. Dr. Date is a physician in the State of
6 California, and I requested through our
7 medical consultant to have the insured
8 examined, and they presented me with Dr.
9 Date as being their top choice to go with.

10 I relied on their recommendation and
11 said, okay, let's schedule the appointment.

12 Q. Okay. Did they give you more than one
13 physician possibility for this medical
14 examination?

15 A. I don't recall that. I believe to my
16 recollection Dr. Date was their -- was
17 their -- was the pick, the person that they
18 said was very qualified.

19 Q. Okay. And do you know where Dr. Date is
20 located?

21 A. California.

22 Q. Where in California?

23 A. I don't know.

24 Q. Well, do you see the letterhead at the top?

25 A. Oh, I'm sorry.

26

1 Stanford.

2 Q. Stanford University.

3 Do you know where that is in

4 California?

5 A. I'm not really familiar with California.

6 Q. Okay.

7 A. I would like to get there someday.

8 Q. Do you know how far Stanford University

9 Medical Center is from Mr. Mathews'

10 residence?

11 A. No.

12 Q. Do you have a policy in terms of distance

13 that you require an insured to go for a

14 medical examination?

15 A. Not so much. We try to keep them in the

16 state.

17 Q. Oh.

18 In California that could be a thousand

19 miles.

20 A. Well, okay.

21 Q. Is that okay with you?

22 Would you schedule someone for an

23 appointment a thousand miles away?

24 MR. EVANS:

25 Objection. Calls for speculation,

26

1 and an incomplete hypothetical.

2 EXAMINATION BY MR. KINNEY:

3 Q. You can answer.

4 A. I would schedule someone with an
5 appointment with the physician I thought
6 could do the best job.

7 Q. Regardless of the distance?

8 MR. EVANS:

9 Objection. Misstates his
10 testimony.

11 EXAMINATION BY MR. KINNEY:

12 Q. You can answer.

13 A. I didn't state that the distance had
14 anything to do with it. I'm just trying to
15 find the best physician.

16 Q. Well, I'm asking about distance.

17 How far would you require a
18 policyholder to go to attend a medical
19 examination?

20 A. That's never really entered my mind.

21 Q. Does Pan American Life Insurance Company
22 have any policy as to how far a
23 policyholder would be required to go for a
24 medical examination?

25 A. No, I can't say that I'm aware of one.

26

1 Q. Okay. Did you ask anyone whether there was
2 a qualified medical examiner available to
3 examine Ms. Mathews closer to her home than
4 Stanford University?

5 A. I don't recall that coming into the
6 conversation.

7 Q. Had you ever utilized the services of Dr.
8 Date before?

9 A. No.

10 Q. When this report from Dr. Date came into
11 Pan American Life Insurance Company, did
12 you read it?

13 A. Yes.

14 Q. And did you reach any conclusions about Ms.
15 Mathews' disability upon reading this
16 report?

17 A. She was disabled.

18 Q. That's what the report says. Right?

19 A. That's right.

20 Q. Okay. And thereafter did you stop
21 analyzing the question of Ms. Mathews'
22 disability?

23 A. Yes. I believe so.

24 Q. At this point did you pay -- or did you
25 authorize -- At this point of reading Dr.

26

1 Date's examination report, did you
2 authorize Ms. Mathews' to be paid the three
3 months of arrearage of her benefits?

4 A. I don't recall.

5 Q. All right. Let's go to the next document.

6 We will mark this Exhibit #37.

7 (Exhibit #37 was marked for
8 identification.)

9 Do you recall seeing this document
10 before?

11 A. Yes, vaguely.

12 Q. I want to address your attention to the
13 third paragraph that begins regarding the
14 third policy.

15 Do you see that?

16 A. You said as for my concern?

17 Q. I'll tell you what. Let's start off at the
18 very first.

19 Do you see that this letter is a
20 response to your letter of November 6?

21 A. Okay. Yes.

22 Q. Okay. And your letter of November 6 we've
23 attached as Exhibit #35. We just looked at
24 it a minute ago.

25 Now, I direct your attention to the
26

1 paragraph that begins regarding the third
2 policy.

3 A. Okay.

4 Q. Do you see that?

5 A. Yes.

6 Q. Okay. Ms. Mathews says, on September 11,
7 2006, I called the collection department
8 and spoke to Diana M. She was the person
9 who was able to find the policy number
10 1257-5730. It was clearly listed in my
11 name, but it was not activated with the
12 other policies that also had my name on
13 them.

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. Do you have any reason to believe
17 that that statement is incorrect?

18 A. That Diane M was the person that she spoke
19 to?

20 Q. Yes.

21 A. No.

22 Q. Okay. Do you know a Diane M in the
23 collection department?

24 A. Yes.

25 Q. Okay.

26

1 A. No. In the customer service department.

2 Q. And what is Diane M's last name?

3 A. I could only make a guess.

4 Q. Well, I don't want you to guess, but if you
5 think you know I would like to know.

6 A. No.

7 Q. Okay. Going on, and not quoting directly,
8 but going on with that same paragraph, you
9 will see that Ms. Mathews indicates that
10 she understood Ms. Bourg to say that you
11 were sitting right there when she had a
12 conversation with Ms. Bourg.

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. Did you talk to Ms. Bourg about that
16 particular comment by Ms. Mathews?

17 A. About her comment in the letter?

18 Q. Yes.

19 About Ms. Mathews' comment on the
20 letter that she had a conversation with Ms.
21 Bourg, and Ms. Bourg said you were sitting
22 right there?

23 A. I don't recall having a conversation
24 concerning this letter.

25 Q. So as you sit here right now you don't know
26

1 whether you talked to Ms. Bourg about that
2 or not?

3 A. No, I don't recall it.

4 Q. Okay. I would like for you to turn to the
5 next page, and there's a paragraph that
6 begins more importantly about the third
7 paragraph there.

8 Do you see that?

9 Are you there?

10 A. Yes. I'm sorry. Yes.

11 Q. Okay. Ms. Mathews says, I wish that these
12 payments were as trivial to me as simple
13 clerical errors seem to be to you and your
14 company.

15 Do you see that?

16 A. Yes, I do.

17 Q. Were you troubled at all by that statement
18 that she seemed to think that you had
19 trivialized this problem?

20 A. I'm sorry.

21 Was I troubled by her statement?

22 Q. Yes.

23 A. I don't recall having any real emotional
24 responses.

25 Q. Okay. Do you see the next sentence

26

1 indicating -- where she says this has been
2 a very difficult transition for me and my
3 family, and the continual stress of
4 wondering when a check may come and in what
5 amount is only increasing my stress.

6 Do you see that?

7 A. Yes.

8 Q. Okay. Do you believe that Pan American
9 Life Insurance Company has a duty to its
10 disability insurance policyholders to get
11 their benefit checks correct?

12 A. Yes, I do. We try to do as good a job as
13 possible.

14 Q. Going to the next paragraph.

15 THE VIDEOGRAPHER:

16 Excuse me. I need to change
17 tapes.

18 MR. KINNEY:

19 Okay.

20 THE VIDEOGRAPHER:

21 We are going off the record. This
22 is -- It is 3:18. This is the end of
23 videotape number 3.

24 (Off the record.)

25 THE VIDEOGRAPHER:

26

1 We're back on the record. This is
2 the beginning of videotape number 4.

3 It's 3:22.

4 EXAMINATION BY MR. KINNEY:

5 Q. Okay. Let's go back to Exhibit #37. We
6 were talking about it before the break.

7 A. Okay.

8 Q. We were on the second page of it. I'm down
9 to the -- what looks like the fourth
10 paragraph which begins in your last
11 paragraph I felt insult added to injury.

12 Do you see that?

13 A. I'm sorry.

14 Which paragraph is that?

15 Q. In your last paragraph I felt insult --

16 A. Okay. I got you.

17 Q. Do you see that?

18 A. Yes, I do.

19 Q. Where she says she has been trying for
20 months to have your company stop
21 automatically withdrawing from my bank
22 account.

23 Do you see that?

24 A. Yes.

25 Q. Did you know that that was the case when
26

1 you wrote the letter of November 6, 2006?

2 A. I don't recall.

3 I mean from what she is saying, and as
4 I am thinking about the claim, there was a
5 good period of time that I was thinking
6 about the first two policies, and that
7 third policy, you know, I wasn't aware of
8 it. So, you know, that would be what she
9 is referring to when she is -- at least
10 that's what I believe that she is referring
11 to when she writes this sentence.

12 Q. Okay. Did you get the impression when you
13 read this paragraph in Exhibit #37 that Ms.
14 Mathews was upset?

15 A. Well, that seems to be what her language is
16 indicative of.

17 Q. Okay. Now, I want you to go to the last
18 paragraph, and just take a look at that.

19 Do you see that Ms. Mathews asks how
20 come you didn't answer my questions about
21 rehabilitation?

22 Do you see that?

23 A. Yes, I do.

24 Q. Okay. And you just told me the answer to
25 that earlier. Was it was just a mistake on

26

1 your part?

2 A. Yes, sir.

3 Q. Okay. Let's go to the next exhibit which

4 we will mark as Exhibit #38.

5 (Exhibit #38 was marked for

6 identification.)

7 Before we go on, I want you to go back

8 to Exhibit #37 for one more second.

9 A. Okay.

10 Q. If you can.

11 Tell me when did Pan American Life

12 receive Exhibit #37?

13 A. That date stamp says November 30. I

14 believe that is 2006.

15 Q. Okay. Now take a look at Exhibit #38.

16 What is Exhibit #38?

17 A. It's a letter from Pan American Life.

18 Q. From you?

19 A. I'm sorry.

20 Yes, from me at Pan American Life.

21 Q. To Ms. Mathews?

22 A. Yes.

23 Q. Okay. And what was the purpose of this

24 letter?

25 A. To address that -- what she was saying in

26

1 the letter dated November 27.

2 Q. Okay. I want you to go to the paragraph
3 beginning concerning the rehabilitation
4 clause.

5 Do you see that?

6 A. Okay. Yes.

7 Q. Okay. Was this your effort to answer the
8 questions that Ms. Mathews had written in
9 Exhibit #37 and her earlier letter
10 of Exhibit #35 about rehabilitation?

11 I'm sorry. I got that wrong. I see by
12 the look on your face your confused, and
13 that's justified.

14 I am going to ask that question again.
15 Hopefully without so many problems.

16 On October 24, Ms. Mathews had written
17 you some questions about rehabilitation
18 which we put into the record in
19 Exhibit #33.

20 A. Okay.

21 Q. And on November 27, she had restated those
22 same basic questions which we put into the
23 record in Exhibit #37.

24 A. Okay.

25 Q. Okay. My question is is Exhibit #38 your
26

1 answer to those questions?

2 A. Yes, I believe so.

3 Q. Okay. So tell me, how does your

4 Exhibit #38, your letter of November 8,

5 answer the question that Ms. Mathews wrote

6 can you tell me what would justify

7 rehabilitation?

8 What in here did you answer -- did you

9 provide as an answer to that question?

10 A. I said this includes but is not limited to

11 evaluation by a certified rehabilitation

12 specialist, physical testing, and

13 vocational aptitude testing.

14 Q. Okay. In Ms. Mathews' case did you have an

15 evaluation by a certified rehabilitation

16 specialist?

17 A. Yes, we did. That was Dr. Date.

18 Q. Dr. Date was a certified rehabilitation

19 specialist?

20 A. I'm sorry. I could be wrong on that.

21 I mean I don't recall her CV right off

22 the top of my head.

23 Q. Well, she says she's the associate

24 professor and head of division of physical

25 medicine and rehabilitation.

26

1 So you consider her to be a certified
2 specialist -- certified rehabilitation
3 specialist?

4 A. Well, I consider her to be certainly
5 knowledgeable about the subject.

6 Q. Okay. And did Dr. Date provide an opinion
7 about occupational therapy for Ms. Mathews?

8 A. I don't recall.

9 Q. Okay. Did you ask Dr. Date to provide such
10 an opinion?

11 A. I don't recall asking her to do that.

12 Q. Did you expect Dr. Date to provide you an
13 opinion on that subject?

14 A. My goal in scheduling the examination with
15 Dr. Date was to have Dr. Date take a look
16 at the insured and give me some idea of her
17 medical condition at the time.

18 Q. And you didn't expect her to give an
19 opinion on Ms. Mathews retraining to become
20 a practical nurse or registered nurse. Did
21 you?

22 A. No. I don't recall having that
23 expectation.

24 Q. Did you -- Okay.

25 Was any physical testing performed that
26

1 affected your decision as to Ms. Mathews'
2 eligibility for rehabilitation benefits?

3 A. I don't recall that.

4 Q. And did you have any vocational aptitude
5 testing performed on Ms. Mathews?

6 A. I don't believe so.

7 Q. Okay. Then Ms. Mathews asks is there a
8 company policy regarding rehabilitation.

9 Did you answer that in your letter of
10 December 8?

11 A. I don't recall right offhand.

12 Q. Well, take a look at it, and see if you
13 did.

14 A. I tried to answer her question to the best
15 of my ability.

16 Q. Okay. So how did you answer that question
17 is there a company policy regarding
18 rehabilitation?

19 A. I believe I quoted the policy.

20 Q. Then she asked do you ever approve this
21 benefit or make exceptions.

22 Did you answer that question?

23 A. I don't think I answered that question in
24 this letter.

25 Q. Okay. And then she asks could I make an
26

1 appeal for this benefit.

2 Did you answer that question?

3 A. No, I don't believe so.

4 Q. The last sentence in that same paragraph on
5 Exhibit #38, when you say, as we have
6 previously indicated in the correspondence
7 dated August 31, 2006, Pan American Life
8 will not be entering into a rehabilitation
9 agreement with you.

10 Do you see that?

11 A. Yes, I do.

12 Q. Did you intend that sentence to completely
13 close the door on this subject with Ms.
14 Mathews?

15 A. No. I just wanted to inform her that
16 that's where we were at that point.

17 Q. I am going to show you another exhibit.
18 This will go fast.

19 This will be marked Exhibit #39.

20 (Exhibit #39 was marked for
21 identification.)

22 This appears to be a letter from Glenda
23 Griffin at Pan American Life to the
24 California Department of Insurance.

25 Do you have that in front of you, sir.

26

1 A. Yes, I do.

2 Q. Have you ever seen that before?

3 A. I don't recall it immediately, no.

4 Q. Okay. I want you to look at the first
5 sentence there. After careful review and
6 consideration, it is necessary that the
7 Complaint Donna Mathew's submit the
8 complete/full account summary for the
9 period December 1, 2005, to January 1,
10 2006.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you have any idea what that means?

14 A. No, I didn't write the letter.

15 Q. Well, but do you understand it?

16 A. What I see is that -- looking for an
17 account summary of the premiums is what I
18 would anticipate.

19 Q. Okay. Do you know why Glenda Griffin would
20 want an account summary of the premiums for
21 the period December 1, 2005, to January 1,
22 2006?

23 A. No. I would only be guessing.

24 Q. Okay. Do you know as you sit here today
25 whether or not Ms. Mathews is still being
26

1 paid benefits 90 days in arrears?

2 A. No, I do not know, but my belief is that
3 she is caught up.

4 Q. Okay. I will show you a document we will
5 mark next in order.

6 (Exhibit #40 was marked for
7 identification.)

8 Can I just have that back for a second?

9 Thanks.

10 Okay. I show you this document, sir.

11 This is three pages in length
12 consisting of what exactly?

13 A. This would be the EOB.

14 Q. Okay. For what period?

15 A. From January 14, 2008, to February 14,
16 2008.

17 Q. Okay. And does it show the date on which
18 payment is being made?

19 A. Yes. That's what I was reading.

20 Q. Okay. And does it -- That shows the period
21 for which payment is being made. Right?

22 A. Yes.

23 Q. And does it show that a payment is being
24 made on or about -- or a check at least is
25 being requested on or about February 7,

26

1 2008?

2 A. That's correct.

3 Q. And that would be for that period?

4 A. That's correct.

5 Q. And so that would indicate that Ms. Mathews
6 was being paid currently. Wouldn't it?

7 A. Yes.

8 Q. Okay. And I see Ms. Bourg's name appears
9 in the bottom right-hand corner.

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. But she actually wasn't working
13 there as of the date that this was
14 prepared.

15 Right?

16 A. That's correct.

17 Q. Okay. So this was actually prepared by
18 somebody else?

19 A. Yes, that's correct.

20 Q. Okay. And there's an authorization code on
21 this, CRS1.

22 Do you see that?

23 A. Yes.

24 Q. Who is that?

25 A. That would be Cory Simon.

26

1 Q. Okay. We -- When we looked at the EOB's
2 earlier, they all had your initials on
3 them.

4 Do you recall that?

5 A. Yes.

6 Q. Okay. But this one has Mr. Simon's
7 initials.

8 Do you know how the change happened
9 that Mr. Simon initialed this one?

10 A. Yes, I do.

11 Q. What happened there?

12 A. Well, Elaine was no longer with the
13 company. I had no support staff. So I was
14 trying to do all couple hundred checks
15 myself manually.

16 So I didn't want to have a situation
17 where my authorization code was on there if
18 I was actually the one punching these
19 manually into the system, because, you
20 know, just as far as accounting principles,
21 I didn't want anyone to think that I would
22 be authorizing a check to myself.

23 So -- Also his limit is higher than
24 mine. So -- and I had some new claims come
25 in that were larger amounts. So that is

26

1 what I did.

2 Q. Okay. So did Mr. Simon actually authorize
3 the payments that are shown on Exhibit #43?

4 A. No. That would be me.

5 Q. So this was actually all done by you?

6 A. Yes. I punched them into the system.

7 Q. So you did the authorization, and you
8 actually were the name who should have
9 appeared where Elaine Bourg's name is.

10 Is that right?

11 A. Yes.

12 Q. Okay. I want to show you -- Let's mark
13 this next exhibit.

14 (Exhibit #41 was marked for
15 identification.)

16 THE WITNESS:

17 I'm sorry.

18 Can we take another quick timeout?

19 MR. KINNEY:

20 Sure.

21 THE VIDEOGRAPHER:

22 We're going off the record. It is
23 3:40. This is videotape number 4.

24 (Off the record.)

25 THE VIDEOGRAPHER:

26

1 We are back on the record. It is

2 3:42. This is videotape number 4.

3 EXAMINATION BY MR. KINNEY:

4 Q. Okay. In front of you should be a document
5 marked Exhibit #41.

6 Do you have that?

7 A. Yes. Yes, I do.

8 Q. Okay. What's that?

9 A. That's an explanation of benefits.

10 Q. For what period?

11 A. That says 9/14/07 through 10/14/07.

12 Q. And when was the check requested for that
13 period?

14 A. This says January 7, 2008.

15 Q. So am I right that in January -- January 7,
16 2008, Ms. Mathews was being paid 90 days in
17 arrears?

18 A. I don't know. My anticipation of this
19 would be that this is a typo.

20 Q. You think this was a typo?

21 A. That's the first thing that comes to my
22 mind, but, you know, I couldn't be sure
23 because I didn't prepare that one.

24 Q. Okay. Well, we know that Ms. Mathews was
25 receiving payments 90 days in arrears back

26

1 in 2006. Right?

2 MR. EVANS:

3 Objection. Vague as to time.

4 EXAMINATION BY MR. KINNEY:

5 Q. In September of 2006 we know that Ms.

6 Mathews was receiving payments 90 days in
7 arrears.

8 Right?

9 A. To my knowledge she had been caught up, or
10 at least I believe she had been caught up.

11 Q. And what was your basis for that belief?

12 A. Because my general practice is to always
13 catch people up.

14 Q. But you never did any checking to find out
15 if that had happened, did you?

16 A. I don't recall. I could have made a
17 mistake on that.

18 Q. Okay. And when you prepared Exhibit #40,
19 the February of 2008 EOB --

20 A. Yes.

21 Q. -- did you check to see whether or not Ms.
22 Mathews had ever been caught up on her
23 90-day arrearage?

24 A. No, I don't recall doing that.

25 Q. Okay. And did you understand when you
26

1 prepared Exhibit #40, that if she had not
2 been caught up that Exhibit #40 would be
3 deceptive?

4 MR. EVANS:

5 Objection. Argumentative.

6 EXAMINATION BY MR. KINNEY:

7 Q. You can answer.

8 A. Can you repeat the question?

9 Q. Yes.

10 You knew when you prepared Exhibit #40
11 that if Ms. Mathews had not been caught up
12 from her 90-day arrearage that Exhibit #40
13 would be wrong.

14 Didn't you?

15 A. I can't say that I knew that.

16 Q. Okay.

17 A. When I prepared this check request, I was
18 just preparing a check request. That's it.

19 You just type in some numbers, and you
20 let the system generate a check. There's
21 no -- There wasn't any other thought than
22 that.

23 Q. These explanations of benefits go to the
24 insured. Don't they?

25 A. That's correct.

26

1 Q. And the insured should be able to rely on
2 the statements that are made in the
3 explanation of benefits. Shouldn't they?

4 A. That would be an ideal world, yes.

5 Q. Yes.

6 And if the period of payment that's
7 reflected on the explanation of benefits is
8 off, that would tend to deceive an insured.
9 Wouldn't it?

10 MR. EVANS:

11 Objection. Calls for speculation,
12 argumentative.

13 EXAMINATION BY MR. KINNEY:

14 Q. You can answer.

15 MR. EVANS:

16 And vague.

17 THE WITNESS:

18 I can't say that exactly that I
19 would agree with that.

20 EXAMINATION BY MR. KINNEY:

21 Q. Okay. Well, Mr. Jones, when you prepared
22 Exhibit #40, was it your intention to
23 deceive Ms. Mathews as to whether or not
24 her benefits were caught up current?

25 A. No. No. I had no intent to deceive anyone

26

1 about anything.

2 Q. Did you make any investigation before you
3 prepared Exhibit #40 to find out if it was
4 correct?

5 A. No.

6 Q. Okay. Go back to Exhibit #7.

7 Have you got Exhibit #7 there?

8 Do you have that there?

9 A. Exhibit #7, yes.

10 Q. What is that?

11 A. It's a letter from Pan American -- Well,
12 from me at Pan American Life.

13 Q. And what was the purpose of this letter?

14 A. The letter was to acknowledge receipt of
15 her letter on July 21, 2006.

16 Q. Okay. Anything else?

17 A. I'm sorry.

18 Yes, there's more to the letter.

19 Q. Yeah.

20 Was there more purpose to the letter
21 than just to -- acknowledgment of receipt?

22 A. Oh.

23 Yes, there was a response to her
24 request for rehabilitation.

25 Q. Okay. And you requested certain things.

26

1 Right?

2 A. Yes, I did.

3 Q. Okay. And then you quoted language from
4 the policy.

5 Do you see that?

6 A. Yes, I do.

7 Q. Okay. But there were two policies. Right?

8 A. There was three policies.

9 Q. There were two policies that contained
10 different language for rehabilitation
11 benefits.

12 Isn't that right?

13 A. There was two policy versions that your
14 referring to?

15 Q. There's two policy provisions. Separate,
16 distinct, different policy provisions on
17 rehabilitation benefits.

18 Right?

19 A. Yes, there's two versions of the policy.

20 Q. Okay. And each contains a somewhat
21 different statement about what
22 rehabilitation benefits are available.

23 Right?

24 A. Yes. There are -- There is differences in
25 the language.

26

1 Q. Okay. And you chose to quote one, but not
2 the other. Right?

3 A. Yes. I quoted whichever one I believe I
4 had at the time.

5 Q. Did you look at them both?

6 A. Yes.

7 Q. Okay. Was there a reason that you only
8 quoted one and not the other?

9 A. Nothing I could think of off the top of my
10 head.

11 Q. Do you recall any discussions about Ms.
12 Mathews with Mr. Simon?

13 A. Yes.

14 Q. Okay. How recently have you discussed Ms.
15 Mathews with Mr. Simon?

16 A. In the past couple of weeks when they told
17 me that this was going to be scheduled.

18 Q. Was anyone else present when you had that
19 discussion with him?

20 A. It wasn't so much of a discussion. It was,
21 hey, Michael, your going to get deposed.

22 Q. Okay. Was anything else said in that
23 discussion?

24 A. Yeah. Make sure that you have the day
25 clear.

26

1 Q. Anything else?

2 A. Nothing else that I can really recall.

3 Q. You didn't discuss the substance of her

4 lawsuit?

5 A. The substance?

6 Q. Yeah.

7 What she was suing for?

8 A. I have no idea what she is suing for.

9 Q. Okay. So then I would take it you didn't

10 discuss that with Mr. Simon.

11 Is that right?

12 A. I -- No. I mean -- Let me make sure I

13 understand what your saying.

14 The substance of the lawsuit, like how

15 much she is suing for, like in some kind of

16 dollar amount?

17 Q. No. No.

18 I am talking about -- Well, anything

19 about the lawsuit at all.

20 Did you discuss it with Mr. Simon?

21 A. No. Just be ready to go to this

22 deposition.

23 Q. Okay.

24 A. Make sure you have the day clear.

25 Q. Prior to that brief discussion about coming

26

1 to this deposition, when was the last time
2 that -- before that that you had talked to
3 Mr. Simon about Ms. Mathews?

4 A. I have no idea. I mean the last time I
5 would really think that we had a
6 conversation would be is it okay if I
7 order, you know, the -- if I contact these
8 vendors and have these actions carried out.

9 Q. Okay. That would be the surveillance and
10 the medical examination?

11 A. Yes. Because I would have needed to
12 explain to him -- I would need his approval
13 for the dollars, but I would need to
14 explain to him why I was going to order the
15 surveillance and the medical exam.

16 Q. Do you recall what you said to him about
17 that?

18 A. Vaguely. I mean basically I would have
19 just laid out to him that we had a claim at
20 the beginning part of the year. It was
21 open, we paid benefits, and then we closed
22 the benefits, and the insured came back and
23 said that she was still disabled.

24 I would have needed to explain why I
25 needed -- well, why I felt what we needed

26

1 to do was order the surveillance and the
2 medical exam, and I would have told him
3 that based on my experience, her behavior
4 with having a different physician or
5 having -- just the way that the medical
6 claim evolved with the physicians and given
7 the nature of the injury, I would have
8 thought, you know, this is something that
9 we should check out to be sure.

10 I would have been wanting to make sure
11 that I had a good grasp on what was
12 happening with this individual medically.
13 So I would have needed to explain those
14 kinds of things to Mr. Simon to get his
15 approval for it.

16 Q. Do you actually recall giving him that
17 explanation, or are you just thinking this
18 is what I probably would have done?

19 A. I mean I couldn't give you like a date and
20 time or, you know, what color shirts we
21 were wearing. I mean I couldn't provide
22 that kind of information. But those are
23 the kinds of conversations that we have,
24 because this isn't something out of the
25 ordinary.

26

1 Q. So that's what you would ordinarily have,
2 that sort of a conversation.

3 Is that right?

4 A. Yes. About why I was making this request.
5 I mean it's a normal course of business.

6 Q. But you don't specifically recall the
7 conversation where you actually made the
8 request.

9 Is that right?

10 A. That's correct. It would have been about
11 the time that I would have made the order
12 to the vendors.

13 Q. Okay. So your testimony about the contents
14 of the conversation that you just gave,
15 that's not based on an actual recollection
16 of a conversation.

17 Is it?

18 A. No. I couldn't say that it's based on the
19 actual date or anything, but, again, those
20 are the kinds of conversations that we have
21 in the course of claim evaluation.
22 Because, like I said, I couldn't just pull
23 out my own personal checkbook and pay for
24 these sorts of things, but as I typically
25 have medical investigations and

26

1 surveillance, these are the factors that
2 would weigh into it.

3 Q. Okay.

4 MR. KINNEY:

5 I believe I'm done.

6 THE WITNESS:

7 No way.

8 MR. EVANS:

9 Let me take two minutes.

10 I don't think I have any
11 questions.

12 MR. KINNEY:

13 You want to go off the record?

14 MR. EVANS:

15 Yes, let's go off the record.

16 THE VIDEOGRAPHER:

17 We are going off the record at
18 3:56. This is videotape number 4.
19 (Off the record.)

20 THE VIDEOGRAPHER:

21 We are back the record. This is
22 videotape number 4. It's 3:59.

23 MR. EVANS:

24 And I have no questions.

25 MR. KINNEY:

26

1 You know, I'll tell you the bad
2 thing about going out of the room
3 before the record is closed. I
4 thought of one more question I wanted
5 to ask while you were out.

6 You may -- Let me tell you what it
7 is.

8 EXAMINATION BY MR. KINNEY:

9 Q. Here is my question.

10 A. Okay.

11 Q. What is your residence address?

12 A. Where I actually live?

13 Q. Yeah.

14 A. I live at 2425, O-X-F-O-R-D, Oxford Place,
15 number 121, and that's Gretna, spelled
16 G-R-E-T-N-A, Louisiana, and that is 70056.

17 MR. KINNEY:

18 Thank you very much.

19 Nothing further.

20 THE VIDEOGRAPHER:

21 This concludes the deposition. We
22 are going off the record at 4:00.

23 This is the end of videotape number
24 4.

25 (Conclusion.)

26

Deposition of MICHAEL R. JONES

Taken on March 14, 2008

WITNESS' CERTIFICATE

I have read or have had the foregoing
testimony read to me and hereby certify that
it is a true and correct transcription of my
testimony, with the exception of any attached
corrections or changes.

MICHAEL R. JONES

1 REPORTER'S CERTIFICATE

2

3 I, LINDY ROOT, Certified Court Reporter,
4 do hereby certify that the above-mentioned
5 witness, after having been first duly sworn by
6 me to testify to the truth, did testify as
7 hereinabove set forth;

8 That the testimony was reported by me in
9 shorthand and transcribed under my personal
10 direction and supervision, and is a true and
11 correct transcript, to the best of my ability
12 and understanding;

13 That I am not of counsel, not related to
14 counsel or the parties hereto, and not in any
15 way interested in the outcome of this matter.

16

17

18

19

20

21 LINDY ROOT

22 CERTIFIED COURT REPORTER

23 REGISTERED PROFESSIONAL REPORTER

24

25